

Report of Findings and Recommendations for the Protection of Washington State's Graves and Cemeteries

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Washington State Department of Archaeology and Historic Preservation
Washington State Governor's Office of Indian Affairs
Washington State Legislature

EXECUTIVE SUMMARY

Following discussions of Senate Bill 5938 entitled “Providing a unified means for handling both Indian and non-Indian graves and cemeteries” and a substitute bill entitled “Regarding the protection of graves and cemeteries,” the State Legislature requested a study of the issues surrounding the discovery of human remains, both Indian and non-Indian. The Legislature requested the following scope of work: examine the legal processes used to dedicate graves and human remains as cemeteries; examine the legal process of decertifying a cemetery; examine the legal process to permit the removal of human remains from property; assess endangered cemeteries and current and older historic sites; develop a statewide strategy and action plan for ensuring that all discoveries of human remains are reported; develop a process to ensure that all human remains, graves, and cemeteries are treated equally and with respect due to a finite, irreplaceable cultural resource of the people of Washington [sic]; and develop model legislation incorporating the above findings.

APT-Applied Preservation Technologies (APT), a program of the nonprofit Eppard Vision, was contracted by the Department of Archaeology and Historic Preservation (DAHP) to complete the scope of work with the exception of developing model legislation; legislative staff was directed to complete this task. APT convened a Study Team to research Washington State’s grave and cemetery regulations, research the grave and cemetery regulations of other states to identify possible models, and gather input from stakeholders and affected communities through two open forums, a series of discussion groups, and review of written comments. The results of the research and fieldwork were compiled into this report of findings and recommendations for the Legislature’s consideration.

From the input gathered from forty-one interactions with stakeholders and affected communities (Appendix A), seven common themes, twenty-one issues, and twenty-three proposed solutions were identified and described. Two groups of recommended solutions were then drawn from the proposed solutions: solutions to be addressed during the next legislative session and solutions requiring further discussion and collaboration. Recommended solutions for the next legislative session include a cleanup bill addressing conflicting regulations; a statewide inventory of known graves and cemeteries; mandatory reporting of discoveries of human remains; standardized steps for reporting, identification, and notification in the event of an inadvertent discoveries of human remains; enforcement of existing penalties; authorization of funding for reinterment, inventory, and planning; and an educational campaign for leadership, professionals, and the public.

Implementation of the recommendations will improve the protection of Washington State’s graves and cemeteries and result in a system of protections that will better serve stakeholders and affected communities. Early identification and planning will reduce the number of inadvertent discoveries occurring during development projects, both public and private. In the event that an inadvertent discovery does occur, a predictable process and adequate funding will result in significant savings of time and money, improved confidence in State policies and regulations, the protection of finite and irreplaceable resources, and a more responsive and respectful system of grave and cemetery protection. Collaboration between the State Legislature and the stakeholders and affected communities will further current efforts to fulfill the shared responsibility to protect the graves and cemeteries of Washington State.

ACKNOWLEDGMENTS

APT – Applied Preservation Technologies (APT) and the entire Study Team would like to acknowledge the support and contributions of the legislators, agencies, associations, and individuals who made this study possible. We are pleased to have been asked to participate and sincerely appreciate the time and efforts of those involved.

Washington State Senators:

Senator Mary Margaret Haugen (D-10th)
Senator Claudia Kauffman (D-47th)
Senator Adam Kline (D-37th)
Senator Eric Oemig (D-45th)

Washington State Representatives:

Representative Sam Hunt (D-22nd)
Representative Lynn Kessler (D-24th)
Representative John McCoy (D-38th)
Representative Kevin Van De Wege (D-24th)

Washington State Agencies:

Dr. Allyson Brooks, State Historic Preservation Officer/Director, Department of Archaeology
and Historic Preservation
Craig A. Bill, Executive Director, Governor's Office of Indian Affairs

Stakeholders and Affected Communities:

APT and the entire Study Team would like to acknowledge each and every individual who shared their thoughts and concerns through open forums, discussion groups, and written comments. We sincerely appreciate the time and efforts of all the participants. A list of participating stakeholders and affected communities is included at Appendix A.

Legislative Study Team:

APT would like to offer our sincere thanks to the members of the Study Team for their service and important contributions to the study. We greatly appreciate their willingness to serve on the Study Team, and their leadership has been a critical component of the study process.

Brian Cladoosby, Chairman of the Swinomish Indian Tribal Community
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STUDY BACKGROUND

On February 7, 2007, Senate Bill 5938 entitled “Providing a unified means for handling both Indian and non-Indian graves and cemeteries” was read and referred to the Senate Committee on Government Operations and Elections. Following a public hearing and executive action in the Senate Committee, a substitute bill entitled “Regarding the protection of graves and cemeteries” was proposed and on February 28 passed to the Senate Rules Committee for a second reading. On March 21, action on the bill ended.

Following the discussions of SB 5938, the State Legislature requested a study of the issues surrounding the discovery of human remains, both Indian and non-Indian. Funding for the study was appropriated to the Department of Archaeology and Historic Preservation (DAHP) and the Governor’s Office of Indian Affairs (GOIA) and was administered by DAHP through an interagency agreement.

The Legislature requested the following scope of work: examine the legal processes used to dedicate graves and human remains as cemeteries; examine the legal process of decertifying a cemetery; examine the legal process to permit the removal of human remains from property; assess endangered cemeteries and current and older historic sites; develop a statewide strategy and action plan for ensuring that all discoveries of human remains are reported; develop a process to ensure that all human remains, graves, and cemeteries are treated equally and with respect due to a finite, irreplaceable cultural resource of the people of Washington [sic]; and develop model legislation incorporating the above findings.

DAHP contracted with APT-Applied Preservation Technologies (APT), a program of the nonprofit Eppard Vision, to complete the scope of work with the exception of developing model legislation; legislative staff was directed to complete this task. APT convened a Study Team comprised of the following individuals: Brian Cladoosby, Chairman of the Swinomish Indian Tribal Community; Darrell Hillaire, former Chairman of the Lummi Nation; Steve Kinley, former Project Manager for the Lummi Nation Semiahmah Recovery Effort; Marty Loesch, Tribal Attorney for the Swinomish Indian Tribal Community; and Mary Thompson, Thompson Consulting and former Washington State Historic Preservation Officer (SHPO).

During the contract period (July 31-November 30, 2007), the Study Team researched Washington State’s grave and cemetery regulations, researched the grave and cemetery regulations of other states to identify possible models, and gathered input from stakeholders and affected communities through a series of open forums, discussion groups, and written comments. The results of the research and input were compiled into this report of findings and recommendations for submission to DAHP. It is the Study Team’s understanding that the report will be shared with GOIA and then submitted under agency cover letter to the Legislature for consideration. The Legislature will make the report available to the public following their review.

ISSUE ANALYSIS

Over the past decade, the State Legislature and the citizens of Washington State have become increasingly aware of various shortcomings in the current system of intended grave and cemetery protections due, in part, to a number of high profile, high cost discoveries of human remains during development projects. These so-called “inadvertent discoveries” have occurred during government projects, such as the Washington State Department of Transportation’s graving dock on the Port Angeles waterfront (2003) and the City of Blaine’s wastewater treatment plant expansion on the Semiahmoo Spit (1999).

Inadvertent discoveries have also occurred during private projects, such as the excavation of a foundation for a new home on Point Roberts in Whatcom County (2004), the excavation of a swimming pool on Point Roberts (2002), and the repair of a retaining wall in West Seattle (2002). Other inadvertent discoveries have occurred during projects funded by a combination of private and small governmental entities, such as the septic system upgrades on Beckett Point in Jefferson County (2007).

Due to shortcomings in the current system of grave and cemetery protections that include a variety of regulatory disconnects, confusing and unpredictable inadvertent discovery procedures, and penalties that are seldom enforced, the response to inadvertent discoveries is often confusing, lengthy, and ultimately unsatisfactory to those responsible for or affected by the process.

While the inadvertent discovery of human remains during development projects represents one type of grave and cemetery protection scenario, the effective protection of the known graves and cemeteries of Washington State represents another. For example, the Department of Archaeology and Historic Preservation (DAHP) serves as the cemetery authority for abandoned and historic cemeteries and historic graves, many of which are threatened or endangered by a combination of factors, including neglect, lack of regulation, and proposed development. Historic and abandoned cemeteries have been threatened or endangered by the proposed construction of a new senior center in the City of Snohomish (2003), by a sand and gravel mining operation near Shelton (1995), and by a logging operation on private property southeast of Cheney (1990).

Both Indian and non-Indian people are buried in all three of these threatened and endangered cemeteries, and their descendants and cemetery advocates attempting to protect them have faced a system of protections that are difficult to interpret and apply effectively. As with inadvertently discovered remains, the effective protection of known graves and cemeteries poses a serious challenge to those responsible due to shortcomings in the current system, including a variety of regulatory disconnects, decentralized data on the location of graves and cemeteries, and a lack of funding.

In seeming contrast to the current challenges of responding to inadvertently discovered human remains and protecting known graves and cemeteries, it is commonly accepted that respect for human remains and the graves and cemeteries where they are found is a fundamental value of nearly every culture. The Washington State Legislature supports this value through various

statements of intent, procedural requirements, and penalty provisions found in the Revised Code of Washington (RCW), including RCW 27.44.030 which states that “the legislature recognizes the value and importance of respecting all graves, and the spiritual significance of such sites to the people of this state.”

As is discussed in the Results section, all forty-one stakeholders and affected communities participating in this study agreed that human remains and graves deserve the utmost respect. When moving from the stated shared value to an action plan, however, participants’ beliefs about how respect for human remains and graves should be expressed are a reflection of the cultural value system of which they are a part. An effective system of grave and cemetery protections, therefore, must take into account the conflict of value systems if it is to serve all people with an interest in the system.

A majority of the stakeholders and affected communities participating in this study also agreed that the descendants of inadvertently discovered human remains and the descendants of those buried in known graves and cemeteries should have a role in deciding what is to be done with the remains upon discovery or endangerment. For many participants, human remains are viewed as people, not as mere bones, and cultural values regarding respectful treatment of human remains upon discovery or endangerment often involve both group and individual responsibilities.

As with cultural values regarding respectful treatment of human remains, beliefs about the role of the descendants in decision-making must be taken into account if the system of grave and cemetery protections is to serve all people with an interest in the system. Decision-making is itself a culturally based process that often involves both public and private discussions, so the system of protections must provide an opportunity for such discussions to occur. Participants in the study agreed that accounting for and addressing conflicts of values requires the establishment of productive relationships and effective communication between all parties.

Despite the shared, fundamental value of respect for graves and cemeteries and the State Legislature’s policy statements in support of this value, many individuals and groups responsible for or affected by the current system of grave and cemetery protections and the way in which it is being implemented believe the system is failing to provide respectful protection of the graves and cemeteries throughout Washington State. For example, the system has become highly fragmented as roles and responsibilities appear in a variety of places in the Code and across jurisdictions; in many instances, the policy statements and minimal procedural directives found in the Code have not been assigned corresponding procedures in the Washington Administrative Code (WAC). The Results section of this report describes in detail the common problems identified by participating stakeholders and affected communities. The resulting lack of clarity results in confusion and delays rather than protection, and both the deceased and their descendants are subjected to an unsatisfactory process with no clear timeframes, outcomes, or funding assistance.

Recognizing the pitfalls of an unpredictable State process, agencies, developers, and citizens may be choosing not to report discoveries of human remains as the Washington State Department of Archaeology and Historic Preservation (DAHP) reports receiving very few

notifications of inadvertent discoveries even though the rate of development on a statewide basis continues to increase.

The introduction of Senate Bill 5938 in February 2007 and the ensuing, sometimes emotional discussion has created an opportunity for the State Legislature to address comprehensively and collaboratively the failing system of grave and cemetery protection. In order to develop and implement any viable, long-term solutions, a basic level of respect and trust must be established among all the parties, and both leadership and staff must commit the time, effort, and resources necessary to improve the system.

The Recommendations section of this report organizes the solutions proposed by the study participants into two groups: solutions to be addressed during the next legislative session and solutions requiring further discussion and collaboration. Through consideration of the solutions and the two-year work plan, the Legislature and the stakeholders and affected communities can together create a system of grave and cemetery protections that will better serve those with an interest in it. In this manner, the shared responsibility to protect the graves and cemeteries of Washington State will be fulfilled.

METHODS

Regulatory Research

In order to analyze the current system of grave and cemetery protections in Washington State, the Study Team conducted a review of applicable State regulations. The Study Team also reviewed the grave and cemetery protection laws and policies of seven additional states in order to determine if other effective models exist; the seven additional states were Arizona, California, Iowa, Minnesota, Oregon, Texas, and Wisconsin. The additional states were identified based on input provided by stakeholders and affected communities and based on the Study Team's experience. While it would be prudent to review additional state regulations governing grave and cemetery protection, a comprehensive review of all state regulations was beyond the scope of this project. Similarly, a comprehensive review of applicable federal and tribal laws was beyond the scope of this project.

To compare grave and cemetery regulations relevant to the scope of work requested by the State Legislature, the Study Team focused on the following components: definitions of "cemetery;" legal processes used to dedicate graves and human remains as cemeteries; legal processes for removal of dedication; statewide inventories of graves and cemeteries; processes for reporting inadvertent discoveries; standardized statewide inadvertent discovery procedures; standardized processes for identifying human remains; incentives for reporting discoveries of human remains; funding for inadvertent discoveries; and penalties for disturbing or failing to report discoveries of human remains.

The Study Team reviewed the following Washington State regulations; websites were accessed throughout the contract period (July 31, 2007-November 30, 2007):

Washington

Chapter 27.44 RCW – Indian Graves and Records
(apps.leg.wa.gov/RCW/default.aspx?cite=27.44)

Chapter 27.53 RCW – Archaeological Sites and Resources
(apps.leg.wa.gov/RCW/default.aspx?cite=27.53)

Title 68 RCW – Cemeteries, Morgues, and Human Remains
(apps.leg.wa.gov/RCW/default.aspx?Cite=68)

The Study Team also reviewed the following regulations and policies from seven additional states; websites were accessed throughout the contract period (July 31, 2007-November 30, 2007):

Arizona

A.R.S Title 32 – Professions and Occupations, Chapter 20 Real Estate, Article 1 Real Estate Department, 32-2101
(www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=32)

A.R.S. §41-844 Duty to report discoveries; disposition of discoveries; definitions
(www.azleg.state.az.us/ars/41/00844.htm)

A.R.S. §41-865 Disturbing human remains or funerary objects; rules; violations; classifications; definitions (www.azleg.state.az.us/ars/41/00865.htm)

A.R.S §41-844 and §41-865 Guidelines, Revised December 21, 2004
(www.statemuseum.arizona.edu/crservices/st_law_guidelines.pdf)

California

Health and Safety Code Section 7000-7025; 7925-7933; 8012-8021; 8010-8011; and 8113-8113.7
(www.leginfo.ca.gov/cgi-bin/calawquery?codesection=hsc&codebody=graves&hits=20)

California Office of Historic Preservation, Technical Assistance Series #10
California State Law and Historic Preservation: Statutes, Regulations and Administrative Policies Regarding Historic Preservation and Protection of Cultural and Historical Resources, State of California – The Resource Agency, Office of Historic Preservation, 1999
(ohp.parks.ca.gov/pages/1054/files/statelaws.pdf)

Iowa

Code of Iowa 263B. State Archaeologist
(nxtsearch.legis.state.ia.us/NXT/gateway.dll?f=templates&fn=default.htm)

Code of Iowa 716.5 Criminal mischief in the third degree
(nxtsearch.legis.state.ia.us/NXT/gateway.dll?f=templates&fn=default.htm)

Code of Iowa 523I.316.6 Discovery of human remains
(www.uiowa.edu/~osa/burials/statutes.htm)

Chapter 11 Ancient Human Skeletal Remains, 685-11 Administrative Code of Iowa
(nxtsearch.legis.state.ia.us/NXT/gateway.dll?f=templates&fn=default.htm)

Chapter 523I.102 Iowa Cemetery Act
(nxtsearch.legis.state.ia.us/NXT/gateway.dll?f=templates&fn=default.htm)

Field Procedures: Treatment of Mounds and Sites Containing Ancient Human Remains, Information for archaeologists and cultural resource managers, Reprinted Summer 2007, The Office of the State Archaeologist at the University of Iowa, Burials Program

The Office of the State Archaeologist at the University of Iowa, Iowa Burial Protection Program
(www.uiowa.edu/~osa/burials/index.html)

Protection of Ancient Burials in Iowa, General Information, date unknown, The Office of the State Archaeologist at the University of Iowa, Burials Program

Protection of Ancient Burials in Iowa, Planning and Development Considerations, Burial Program, Office of the State Archaeologist, The University of Iowa, date unknown
(www.uiowa.edu/~osa/burials/developmentrecommendations.pdf)

Minnesota

Minnesota Statutes 2006, Chapter 307. Private Cemeteries, Section .08 Damages; Illegal Molestation of Human Remains; Burials; Cemeteries; Penalty.
(www.revisor.leg.state.mn.us/bin/getpub.php?pubtype=STAT_CHAP_SEC&year=2006§ion=307.08)

State Archaeological Procedures for Implementing Minnesota's Private Cemeteries Act (MS 307.08), Scott Anfinson, Office of the State Archaeologist, Minnesota Department of Administration, Draft – July 2007

Program Evaluation Division, Office of the Legislative Auditor, State of Minnesota, State Archaeologist, 2001 (www.auditor.leg.state.mn.us/ped/2001/0106sum.htm)

Oregon

ORS Chapter 97 – Rights and Duties Relating to Cemeteries, Human Bodies, and Anatomical Gifts (www.leg.state.or.us/ors/097.html)

ORS Chapter 146 – Investigations of Deaths, Injuries, and Missing Persons
(www.leg.state.or.us/ors/146.html)

ORS Chapter 358 – Museums; Historical Societies; Preservation of Historical and Archaeological Properties and Objects; Oregon Historic Families Database
(www.leg.state.or.us/ors/358.html)

ORS Chapter 692 – Funeral Service Practitioners; Embalmers; Funeral Establishments; Cemetery and Crematory Operations (www.leg.state.or.us/ors/692.html)

Texas

Texas Health and Safety Code Title 8. Death and Disposition of the Body, Chapters 694-715
(tlo2.tlc.state.tx.us/statutes/hs.toc.htm)

Texas Historical Commission, Chapter 26, Rules of Practice and Procedure for the Antiquities Code of Texas (www.thc.state.tx.us/rulesregs/rrstate.html)

Antiquities Code of Texas (Amended Sept. 1, 1997), Chapter 191
(www.thc.state.tx.us/rulesregs/RulesRegsPDF/AntiqCode.pdf)

Preserving Historic Cemeteries, Texas Preservation Guidelines, 2001, Texas Historical Commission (www.thc.state.tx.us/publications/guidelines/Preservecem.pdf)

State of Texas Penal Code, Title 7. Offenses Against Property, Chapter 28.03. Criminal Mischief (tlo2.tlc.state.tx.us/statutes/docs/PE/content/pdf/pe.007.00.000028.00.pdf)

State of Texas Penal Code, Title 9. Offenses Against Public Order and Decency, Chapter 42.08. Abuse of a Corpse (tlo2.tlc.state.tx.us/statutes/docs/PE/content/pdf/pe.009.00.000042.00.pdf)

Wisconsin

1985 Wisconsin Act 316

(www.wisconsinhistory.org/hp/burialsites/pdfs/1985_act_316.pdf)

Wisconsin's Burial Sites Preservation Law, Wisconsin Statutes. 157.70 (www.wisconsinhistory.org/hp/burialsites/pdfs/157_70.pdf)

Administrative Rules, HS 2

(www.wisconsinhistory.org/hp/burialsites/pdfs/hs_%202.pdf)

Input from Stakeholders and Affected Communities

In order to gather information about current grave and cemetery protections from those responsible for or affected by the protections, members of the Study Team attended two open forums convened by Representative John McCoy, conducted a series of discussion groups, and reviewed written comments. A list of participating stakeholders and affected communities is included at Appendix A.

The open forums were convened on July 10, 2007, in Mukilteo and on September 11, 2007, in Port Townsend. At the first forum, potential Study Team members in attendance were asked to introduce themselves to the audience as the likely consultants; at the second forum, Study Team members provided an update on meetings held to date and on general themes emerging from discussions. At both forums, members of the Study Team listened to discussions moderated by Ralph Munro, former Secretary of State, and took notes. Study Team members later reviewed the notes in order to identify common themes, issues, and proposed solutions. While a detailed statistical analysis of the information gathered was beyond the scope of this study, a basic spreadsheet was used to track the frequency of common responses. The results are reflected in the following section of this report.

Study Team members convened a total of thirty discussion groups between July 16, 2007, and November 21, 2007, in numerous locations statewide; Team members also attended five previously scheduled meetings during which the study was discussed. To identify potential discussants during development of the scope of work and throughout the study period, the Study

Team considered the current system of grave and cemetery protections and those responsible for or affected by its implementation. Recent events, such as the discoveries of human remains in Port Angeles (2003) and Blaine (1999) and the endangerment of cemeteries in Snohomish (2003) and southeast of Cheney (1990), indicated that a wide range of stakeholders and affected communities exist, from State agencies to Native American tribes to real estate developers to private citizens. While it would be prudent to convene additional discussion groups (e.g. the federally recognized Washington tribes and the Oregon and Idaho tribes with traditional territory in Washington with whom the Study Team was unable to meet, Washington State Parks, Association of Washington Business, Washington Public Utilities Districts Association), convening all relevant discussion groups was beyond the scope of this study.

Study Team members contacted potential discussants by telephone and email in order to describe the study and invite their participation in a discussion group. Alternatively, several discussants contacted the Study Team by letter and email expressing their interest in participating in the study. While most discussants contacted by the Study Team participated in a discussion group, a number preferred to distribute the scope of work to their members and forward any comments received to the Study Team. A list of discussants accepting the scope of work for distribution but not actually participating in a discussion group is included at Appendix A. Also included at Appendix A is a list of potential stakeholders who were contacted about the study but who did not respond.

Discussion groups were held in person and typically lasted between one and three hours. Study Team members provided discussants with a copy of the scope of work (see Appendix B) and informed them that their input and suggestions, along with the results of the regulatory analysis, would be reflected in a report of findings and recommendations to be submitted to DAHP and GOIA and then to the State Legislature. Rather than conducting a structured interview, an open discussion format was employed in an effort to provide discussants with the greatest opportunity to relay their experiences with the current system of grave and cemetery protections. Study Team members took notes during the discussion groups and entered common responses in the same spreadsheet used to track open forum input. The results are reflected in the following section of this report.

A total of four comment letters addressing the scope of work was received during the study period. Written comments were solicited through an article appearing in the September newsletter of the Association for Washington Archaeology (AWA). In addition, written comments were received from individuals and organizations learning about the study through various professional channels. Study Team members reviewed the comments and entered common responses in the same spreadsheet used to track open forum and discussion group input. The results are reflected in the following section of this report.

RESULTS

Regulatory Research

In order to analyze the current system of grave and cemetery protection in Washington State, the Study Team conducted a review of applicable State regulations; the Study Team also reviewed the grave and cemetery protection laws and policies of seven additional states in order to determine if other effective models exist.

As the results of the regulatory research on Washington State and seven additional states indicate, a variety of state models for the protection of graves and cemeteries exist. Integration of selected elements into Washington State's system of grave and cemetery protections is discussed in the recommendations section of this report.

Current Washington State Regulations

The Study Team examined Chapter 27.44 of the Revised Code of Washington (RCW), Chapter 27.53 RCW, and Title 68.60 RCW. The following subsections discuss specific components of each law and the conflicts between laws:

Definition of a cemetery

Currently, the law governing cemeteries, morgues, and human remains (Chapter 68.04.040 RCW) defines a "cemetery" as:

- (1) Any one, or a combination of more than one, of the following, in a place used, or intended to be used for the placement of human remains and dedicated, for cemetery purposes:
 - (a) A burial park, for earth interments.
 - (b) A mausoleum for cryptic interments.
 - (c) A columbarium, for permanent niche interments; or
- (2) For the purposes of chapter 68.60 RCW only, "cemetery" means any burial site, burial grounds, or place where five or more human remains are buried. Unless a cemetery is designated as a parcel of land identifiable and unique as a cemetery within the records of the county assessor, a cemetery's boundaries shall be a minimum of ten feet in any direction from any burials therein.

Chapter 68.60.010 RCW (Abandoned and Historic Cemeteries and Historic Graves) defines an "abandoned cemetery" as a

a burial ground of the human dead in [for] which the county assessor can find no record of an owner; or where the last known owner is deceased and lawful conveyance of the title has not been made; or in which a cemetery company, cemetery association, corporation, or other organization formed for the purposes of burying the human dead has either disbanded, been administratively dissolved by the secretary of state, or otherwise ceased to exist, and for which the title has not been conveyed.

Chapter 68.60.010 RCW defines a “historical cemetery” as

any burial site or grounds which contain within them human remains buried prior to November 11, 1889; except that (a) cemeteries holding a valid certificate of authority to operate granted under RCW 68.05.115 and 68.05.215, (b) cemeteries owned or operated by a any recognized religious denomination that qualifies for an exemption from real estate taxation under RCW 84.36.020 on any of its churches or the ground upon which any of its churches will be built, and (c) cemeteries controlled or operated by a coroner, county city, town, or cemetery district shall not be considered historical cemeteries.

In addition, Chapter 68.60.010 defines a “historic grave” as “a grave or graves that were placed outside a cemetery dedicated pursuant to this chapter and to chapter 68.24 RCW, prior to June 7, 1990, except Indian graves and burial cairns protected under 27.44 RCW.”

The exception in Chapter 68.60.010 RCW related to the treatment of Indian graves is discussed in Chapter 27.44.030 RCW and includes the following statements:

The legislature declares that:

- (1) Native Indian burial grounds and historic graves are acknowledged to be a finite, irreplaceable, and nonrenewable resource, and are an intrinsic part of the cultural heritage of the people of Washington. The legislature recognizes the value and importance of respecting all graves, and the spiritual significance of such sites to the people of this state;
- (2) There have been reports and incidents of deliberate interference with native Indian and historic graves for profit-making motives;
- (3) There has been careless indifference in cases of accidental disturbance of sites, graves, and burial grounds;
- (4) Indian burial sites, cairns, glyptic markings, and historic graves located on public and private land are to be protected and it is therefore the legislature’s intent to encourage voluntary reporting and respectful handling in cases of accidental disturbance and provide enhanced penalties for deliberate desecration.

Dedication of graves and human remains as cemeteries

“Grave” is defined at Chapter 68.04.150 as “a space of ground in a burial park, used or intended to be used, for burial.”

Chapter 68.04.020 RCW defines “human remains,” or “remains” as “the body of a deceased person, includes the body in any stage of decomposition, and includes cremated human remains.”

Chapter 68.24 RCW states that cemetery authorities may assume authority over property containing human remains and must produce a survey map of the lands and structures within the cemetery. The cemetery authority shall file the map or plat in the office of the county in which

the property is situated. The cemetery authority must also file a written declaration of dedication of the property delineated on the plat or map, dedicating the property exclusively to cemetery purposes.

Chapter 68.60.020 RCW defines “dedication” of a cemetery as follows: “Any cemetery, abandoned cemetery, historical cemetery, or historic grave that has not been dedicated pursuant to RCW 68.24.030 and 68.24.040 shall be considered permanently dedicated and subject to RCW 68.24.070. Removal of dedication may only be made pursuant to RCW 68.24.090 and 68.24.100.”

Removal of dedication

Chapter 68.24.090 RCW states that a dedicated cemetery shall remain exclusively a cemetery until the dedication is removed by an order and decree of the superior court of the county where the cemetery is located. The process for removal of dedication includes a proceeding supported by the appropriate cemetery authority, a public notice of a hearing, and proof accepted by the superior court that no human remains exist within the cemetery or that all of the human remains have been exhumed from the areas where dedication will be removed; that human remains will not be placed in area where dedication has been removed; and that notice has been given in writing to DAHP and the Cemetery Board at least sixty days before filing the proceedings.

The cemetery authority must also notify the public about the court proceedings for removal of dedication. The public notice must include the place and time of a hearing at the applicable county superior court and a description of the portion of the cemetery property where the removal of dedication will take effect. The notice must also state that all of the human remains have been removed or that no interments have been made in the area where removal of dedication is proposed (Chapter 68.24.100 RCW).

Statewide inventory of graves and cemeteries

Currently, Washington State does not have a statewide inventory of graves and cemeteries.

Reporting inadvertent discoveries of human remains

Pursuant to Chapter 68.50.010 RCW, it is mandatory that human remains be reported to a coroner or medical examiner when remains are found in a number of scenarios, including “suspicious circumstances,” “where death results from unknown or obscure causes,” and “when a body is found dead.” However, reporting an inadvertent disturbance or discovery of Indian graves is voluntary at RCW 27.44.030(4).

Under Chapter 68.50.010 RCW, coroners and medical examiners have jurisdiction over bodies; following the definition of “human remains” at Chapter 68.04.020 RCW, this includes bodies in any state of decomposition. However, DAHP also has jurisdiction over “prehistoric and historic American Indian or aboriginal... artifacts and implements of culture,” including “skeletal remains” as per Chapter 27.53.040 RCW.

Inadvertent discovery process

In the event native Indian graves are disturbed through inadvertence, the human remains shall be reinterred under the supervision of the appropriate Indian tribe (Chapter 27.44.040). The same process is afforded historic graves at Chapter 68.60.050(1) RCW.

Identification of human remains

In the event of an inadvertent discovery of human remains, the county coroner or medical examiner is tasked with the identification of human remains (Chapter 68.50.010 RCW).

Incentives for reporting the discovery of human remains

Under Chapter 68.50.020 RCW, the incentive for reporting a dead body to the county coroner or medical examiner is to avoid a misdemeanor charge.

Funding for the inadvertent discovery of human remains

According to Chapter 27.44.040(1) RCW and Chapter 68.60.050(1) RCW, the expenses associated with reinterment of human remains are to be paid by DAHP to the extent funding is appropriated by the State Legislature.

Penalties for disturbing or failing to report human remains

Under Chapter 68.60.040 RCW, the protection of cemeteries is provided through a penalty clause stating that it is a class C felony if a person “unlawfully or without right willfully destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes, any tomb, plot, monument, wall, post, or railing, or any enclosure for the protection of a cemetery or any property in a cemetery.”

The protection of historic graves is provided at Chapter 68.60.050 RCW in which the penalty for knowingly damaging a historic grave is the equivalent to that for damaging a cemetery; however, as stated above, if a historic grave is disturbed inadvertently and is reported, DAHP is to oversee and fund the reinterment of the remains.

In addition, Chapter 68.60.060 RCW provides for civil liability as any “person who violates any provision of this chapter is liable in a civil action by and in the name of the state cemetery board to pay all damages occasioned by their unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed and to the care fund if one is established.”

The penalties in Chapter 27.44.040(1) RCW for knowingly disturbing or vandalizing an Indian grave are the same as the penalties in Chapter 68.60.050(1) RCW.

Under Chapter 68.50.020 RCW, the penalty for failing to report a dead body to the county coroner or medical examiner is a misdemeanor.

Currently, neither RCW 68.60 nor RCW 27.44 provides a penalty for failing to report known or inadvertently discovered abandoned and historic cemeteries, historic graves, or Indian graves.

Current Regulations of Seven Additional States

The Study Team also examined the grave and cemetery regulations and policies of seven additional states, including Arizona, California, Iowa, Minnesota, Oregon, Texas, and Wisconsin. While not all of the additional states have developed legislation corresponding to each of the subsections developed by the Study Team, the findings below illustrate the diverse approaches to grave and cemetery protection and several potentially effective models for the State Legislature's consideration.

Arizona

Definition of a cemetery

Title 32.2101 of the Arizona Revised Statutes (ARS) states that a "cemetery" or "cemetery property" means any one, or a combination of more than one, of the following in a place used, or intended to be used, and dedicated for cemetery purposes:

- (a) A burial park, for earth interments.
- (b) A mausoleum, for crypt or vault entombments.
- (c) A crematory, or a crematory and columbarium, for cinerary interments.
- (d) A cemetery plot, including interment rights, mausoleum crypts, niches, and burial spaces.

Statewide inventory of graves and cemeteries

Currently, Arizona does not have a statewide inventory of graves and cemeteries.

Reporting inadvertent discoveries of human remains

The Director of the Arizona State Museum is the designated state agent responsible for handling issues relating the discovery of human remains. According to §41-844(A), anyone who encounters human remains must report the discovery to the Arizona State Museum.

Inadvertent discovery process

ARS §41-844.C.1 states that the Director will respond within ten working days "to all requests for permission to disturb." If the Director fails to respond within ten days, the project can proceed (ARS §41-844.C.1).

The Guidelines for ARS §41-844 and §41-865 state that consultation regarding human remains shall not cause unreasonable project delays. The Guidelines further state that on private lands the ten-day time frame can be waived if it will cause project delays. The landowner and the project manager are the only parties with the authority to waive these limitations.

Identification of human remains

Neither ARS §41-844 nor ARS §41-865 specify the party responsible for the identification of human remains; however, if it is unclear whether or not the skeletal remains are human, the individual must contact the Arizona State Museum (ARS §41-844 and §41-865 Guidelines).

Incentives for reporting the discovery of human remains

The incentive for reporting the discovery of human remains in the state of Arizona is avoiding potential criminal or civil charges (see penalty section below).

Funding for the inadvertent discovery of human remains

ARS §41-844(I) requires that the project proponent pay for curation and reburial costs when a construction project results in the discovery of human remains. The cost of reburials based on a relative's or a group's specific wishes are to be paid by the relative or group.

In addition §41-865(E) states:

If the director or a group with a cultural affinity in consultation with the landowner determines that human remains or funerary objects shall be preserved in place, moved or reburied, any costs required by these actions may be borne either wholly or partially by the landowner. If the landowner is unwilling or unable to bear the costs required, the acquisition and preservation fund shall bear the full cost of removal. A group or institution taking responsibility for these remains or objects shall bear the cost of their preservation or reburial. If there are insufficient monies in the acquisition and preservation fund, or if the director is unable or unwilling to allocate monies for the removal and no other source is available to pay for removal within the ten working day period, the landowner, the lessee or the landowner's or lessee's agent may proceed with work on a construction project or similar project without violating the provisions of subsection A or B. The removal of all remains and objects under this subsection shall take place within ten working days of the request for the permission to disturb unless the owner of the property where the remains or objects are located agrees to an extension of this period.

Penalties for disturbing or failing to report human remains

Under §41-865(G), any person who intentionally disturbs human remains without a state permit is guilty of a class 5 felony.

California

Definition of a cemetery

The California Health and Safety Code Section 7003 states that "cemetery" means either of the following:

- (a) Any of the following that is used or intended to be used and dedicated for cemetery purposes:
 - (1) A burial park, for earth interments.
 - (2) A mausoleum, for crypt or vault interments.
 - (3) A crematory and columbarium, for cinerary interments.
- (b) A place where six or more human bodies are buried.

Statewide inventory of graves and cemeteries

The Office of Historic Preservation manages a database of archaeological sites and historic properties (Section 5024.6.m).

The Native American Heritage Commission (NAHC) is tasked with developing an inventory of known graves and cemeteries on private lands (Section 5097.94.a).

Reporting inadvertent discoveries of human remains

According to Section 7050.5.b, any person who encounters human remains shall notify the county coroner.

Inadvertent discovery process

Pursuant to Section 7050.5.b (Removal of Human Remains), in the event that human remains are encountered outside of a dedicated cemetery, excavations shall cease until the county coroner has determined that the remains are of non-forensic interest. The coroner shall make the determination within two working days and report to the person responsible for the excavations.

In cases where the remains have been identified and reported as Native American, the Native American Heritage Commission (NAHC) mediates disputes between private property owners and Native Americans. The NAHC has 48 hours to contact the “most likely descendants” and assist in developing a mutually agreeable plan for handling the remains. If the parties cannot agree, the property owner reinters the remains in an area that will not be disturbed in the future (Section 5097.98.a).

Identification of human remains

The county coroner is responsible for identifying human remains; if the coroner believes the remains are Native American, the coroner shall notify who they believe to be the most likely descendants within twenty-four hours (Section 7050.5.c).

Incentives for reporting the discovery of human remains

The incentive for reporting the discovery of human remains is avoiding the penalties described below.

Funding for the inadvertent discovery of human remains

While California has developed a Heritage Fund (Section 5079), it is unclear if the Fund applies to the inadvertent discovery of human remains.

Penalties for disturbing or failing to report human remains

It is a misdemeanor in California to disturb human remains that are discovered outside a private cemetery (Section 7050.5.a).

Pursuant to Section 5097.94, the NAHC has the authority to bring legal action against anyone who plans to disturb or cause irreparable damage to a Native American cemetery. It is a felony to remove Native American human remains without permission (Section 5097.99).

Iowa

Definition of a cemetery

Chapter 531I.102.6 of the Iowa Cemetery Act defines a "cemetery" as follows:

Any area that is or was open to use by the public in general or any segment thereof and is used or is intended to be used to inter or scatter remains. "Cemetery" does not include the following:

- a. A private burial site where use is restricted to members of a family, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration.
- b. A private burial site where use is restricted to a narrow segment of the public, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration.
- c. A pioneer cemetery.

Statewide inventory of graves and cemeteries

The Office of the State Archaeologist is responsible for maintaining records of all known or even suspected ancient burial sites (Chapter 68-11.1.4, Iowa Administrative Code). The Iowa Code includes a provision defining "ancient remains" as human remains that are over 150 years old (Section 263.7, Iowa Code).

Reporting inadvertent discoveries of human remains

The discovery of human remains must be reported to the county or state medical examiner or a city, county, or state law enforcement agency (Chapter 523I.316.6, Iowa Code).

Inadvertent discovery process

The Office of the State Archaeologist (OSA) has developed procedures in collaboration with the OSA Indian Advisory Council and other stakeholders regarding the inadvertent discovery of human remains, including "ancient human remains."

The following excerpts are from the Office of the State Archaeologist's "Field Procedures: Treatment of Mounds and Sites Containing Ancient Human Remains, Information for archaeologists and cultural resource managers" (reprinted 2007):

Newly discovered burial site encountered during construction

If human remains are encountered in an actively worked construction area, the construction workers, foreman, and supervisor should be aware that to proceed would be intentional disinterment without permission, a breach of Iowa State Law (Code of Iowa, Chapters 263B, 523I.316.6, and 716.5) and could lead to prosecution. Every effort should be made to temporarily discontinue construction activities. If possible, someone should be left to oversee the site, and if necessary, county or state law enforcement officials contacted to provide site security. The OSA Burials Program Director or State Archaeologist should then immediately be contacted. If no one is available to remain on the site, *in situ* remains should be photographed and surface finds collected before departure.

Historical Burial Sites

- A. Marked historic burials less than 150 years old are covered under Code of Iowa Chapter 523I (the former Chapter 566 incorporated into the expanded Chapter 523I), and require a permit from the Office of Vital Statistics for disinterment (Chapter 144.34).
- B. Unmarked historic cemeteries that may be close to or less than 150 years old may present problems in determining responsibility. Qualified archaeologists may be the only professionals who have the training and resources necessary to accurately determine the age of the remains and possible associated grave furniture. The Office of the State Archaeologist is the appropriate authority to first contact upon discovery, with a determination to follow regarding subsequent official notification of appropriate authorities.

Obviously recent human remains

If human remains are encountered which are obviously of recent origin (i.e. if any flesh or clothing are still discernible), the appropriate county or state law enforcement officials and the County Coroner should be contacted. Remains should not be collected or otherwise disturbed if a crime may be involved.

The State Archaeologist is responsible for “investigating, preserving, and reintering discoveries of ancient human remains.” If the remains have been removed or need to be removed, the State Archaeologist has the authority to disinter and study the remains prior to reinterment. In addition, the State Archaeologist has the authority to deny permission to disinter human remains if it is determined that the remains have “state and national significance from a historical or scientific standpoint” (Chapter 263.B, Iowa Code). If ancient human remains are removed, they are reinterred in a designated state cemetery that is closed to the public (Chapter 263B.8, Iowa Code).

Identification of human remains

The State Archaeologist is responsible for coordinating with a forensic osteologist to study ancient burials (Chapter 263.7, Iowa Code).

Incentives for reporting the discovery of human remains

See penalties section below.

Funding for the inadvertent discovery of human remains

Pursuant to Chapter 263B.7, the State Archaeologist is responsible for “investigating, preserving, and reintering discoveries of ancient human remains.”

Penalties for disturbing or failing to report human remains

Intentional disturbance of burials is a violation of Iowa State Law and is punishable as an aggravated misdemeanor (Chapter 716.5, Iowa Code). Failure to report the discovery of human remains is a serious misdemeanor (Chapter 523I.316.6, Iowa Code).

Minnesota

Definition of a cemetery

Chapter 307.08 of the Minnesota Statutes 2006, Subdivision 13(g) defines a cemetery as “a discrete location that is known to contain or intended to be used for the interment of human remains.”

Statewide inventory of graves and cemeteries

The Office of the State Archaeologist manages locational and related data about burial sites. The information can be accessed with permission via the Office of the State Archaeologist’s website and is considered “security information.” Individuals who are granted access to the data maintained on the State’s site are subject to liability and penalty if data is improperly used (Chapter 307.08, Subdivision 11).

Reporting inadvertent discoveries of human remains

Currently, there is no provision for reporting human remains within Chapter 307.08.

Inadvertent discovery process

Remains found outside a recorded cemetery that are older than fifty years and that cannot be identified are the responsibility of the State Archaeologist. If the remains are found to be Indian, the State Archaeologist and the Indian Affairs Council collaborate in order to determine the tribal identity. If the tribal identity can be ascertained, the State Archaeologist and the Indian Affairs Council, turn the remains over to contemporary tribal leaders. If the State Archaeologist or the Indian Affairs Council request a scientific study of the remains, a qualified professional archaeologist is allowed to study the remains before they are delivered to the appropriate tribal leaders (Chapter 307.08, Subdivision 7).

Identification of human remains

Chapter 307.08 does not specify the party responsible for determining that human remains are older than fifty years.

Incentives for reporting human the discovery of human remains

See funding and penalties sections below.

Funding for the inadvertent discovery of human remains

The cost of the “authentication, identification, marking, and rescue of unmarked or unidentified burial grounds or burials” shall be the responsibility of the State (Chapter 307.08, Subdivision 5).

When an Indian burial ground is located on public lands or waters, the State is responsible for relocation costs if the burial ground is to be relocated. If large Indian burial grounds are involved, the State is encouraged to purchase the land in order to protect the burials instead of removing them (Chapter 307.08, Subdivision 8).

Penalties for disturbing or failing to report human remains

A person who “intentionally, willfully, and knowingly destroys, mutilates, injures, or disturbs skeletal remains or human burial grounds is guilty of a felony.” Any person vandalizing a cemetery is guilty of a gross misdemeanor (Chapter 307.08, Subdivision 2).

Oregon

Definition of a cemetery

Oregon Regulatory Statutes (ORS) 97.010.2 defines a cemetery as “any place dedicated to and used, or intended to be used, for the permanent interment of human remains.”

For purposes of ORS 97.740 an Indian grave is defined as a “burial” or “human remains.” A burial is defined as “any natural or prepared physical location whether originally below, on or above the surface of the earth, into which, as a part of a death rite or death ceremony of a culture, human remains were deposited” (ORS 358.905.e). Human remains are defined in ORS 358.905.g as the “physical remains of a human body, including, but not limited to, bones, teeth, hair, ashes or mummified or otherwise preserved soft tissues of an individual.”

In addition, Oregon defines a “historic cemetery” in ORS 97.772, as “any burial place that contains remains of one or more persons who died before February 14, 1909” (1999 c. 731 1; 2003 c. §1).

Statewide inventory of graves and cemeteries

Pursuant to ORS 97.782, the Oregon Commission on Historic Cemeteries is responsible for maintaining a list of all historic cemeteries in the State.

ORS 97 does not discuss a statewide inventory of Indian graves.

Reporting inadvertent discoveries of human remains

In the event that native Indian human remains are discovered, the discovery shall be reported to the state police, the State Historic Preservation Officer, the appropriate Indian tribe, and the Commission on Indian Services (ORS 97.745.4).

Inadvertent discovery process

If human remains are encountered during excavations of an archaeological site on privately owned land, the person shall stop all excavations and report the find to the landowner, state police, the State Historic Preservation Officer, and the Commission on Indian Services (ORS 358.920.6).

Identification of human remains

Pursuant to ORS 146.090 and 146.095, the law enforcement official, district medical examiner, and the district attorney of the county where the death occurs are responsible for deaths requiring investigation. Deaths that require investigation include those “occurring under suspicious or unknown circumstances.”

Incentives for reporting the discovery of human remains

See penalty section below.

Funding for the inadvertent discovery of human remains

In Oregon, if human remains are removed during an archaeological investigation, the reinterment will be performed under the supervision of the affected tribe, and the archaeologist will pay the costs associated with the reburial (ORS 97.750.1).

Pursuant to ORS 358.953.2, if human remains are removed from private property at a tribe's request, the tribe requesting removal shall pay for the removal and the restoration of the property.

ORS 97.745.1 states that any person who inadvertently discovers a native Indian burial shall be responsible for the reinterment of the human remains under the supervision of the appropriate Indian tribe.

Penalties for disturbing or failing to report human remains

The penalty for disturbing or failing to report the discovery of human remains is a Class B misdemeanor (ORS 358.920.8).

Any individual or the Attorney General can file a civil action against an individual who performed a prohibited act under ORS 358.920. The civil action must be filed within five years of the violation (ORS 358.961).

Regarding Indian burials, an "Indian tribe or enrolled member thereof" can file a civil action in the county court in which the burial was located within two years of a violation of ORS 97.745 (ORS 97.760).

Texas

Definition of a cemetery

In Chapter 26.5.6.B.v of the Texas Administrative Code (Title 13, Part 2), a cemetery defined as follows:

Cemeteries and burials, marked and unmarked, are special locales set aside for burial purposes. Cemeteries contain the remains of one or more persons. Burials may contain the remains of one or more individuals located in a common grave in a locale not formerly or subsequently used as a cemetery. The site area encompasses the human remains present and also grave stones, markers, containers, coverings, garments, vessels, tools, and other goods, which may be present. Cemeteries and burials whether prehistoric or historic, that are publicly owned are protected under the Antiquities Code. Cemeteries are considered historic if interments within the cemetery occurred at least fifty (50) years ago. Individual burials within a cemetery are not considered historic unless the interments occurred at least (50) years ago.

Statewide inventory of graves and cemeteries

Currently, the State of Texas does not have a statewide inventory of graves and cemeteries.

Reporting inadvertent discoveries of human remains

State law does not compel the citizens of Texas to report the discovery of human remains on private lands.

However, if a person discovers an archaeological site on public land, including human remains, project activities shall cease and the person shall notify the Texas Historical Commission (Section 191.0525.g.1).

Inadvertent discovery process

If a project has been reviewed by the Texas Historical Commission and discovery of an archaeological site, including human remains, occurs on public lands, the Texas Historical Commission will determine, within two days, if a historically significant site is present within the project area; if additional steps are necessary to protect the site; and if an archaeological assessment is warranted (Section 191.0525.g.1.a.b.c). If the Texas Historical Commission does not respond within two days, the project may proceed (Section 191.0525.g.2).

Chapter 26.11.4 of the Texas Administrative Code (Title 13, Part 2) states:

Anyone working on public lands who discovers archeological sites or historic structures which may qualify for designation as a State Archeological Landmark according to the criteria listed in Sections 26.7-26.10 of this title (relating to Criteria for Evaluating Historic Structures; Criteria for Evaluating Archeological Sites; Criteria for Evaluating Caches and Collections; and Criteria for Evaluating Shipwrecks) shall report such discovery to the state agency or political subdivisions owning or controlling the property and to the commission. Upon notification, the commission staff may initiate designation proceedings if it determines the site to be a significant cultural or historical property and/or the commission staff may issue a permit for mitigative archeological investigations or any other investigations.

Identification of human remains

When the Texas Historical Commission is notified by a state agency or political subdivision about archaeological resources, including human remains, the Commission assists with the identification of human remains (Chapter 26.11.4).

Incentives for reporting the discovery of human remains

Currently, there are no incentives for reporting the discovery of human remains.

Funding for the inadvertent discovery of human remains

In Texas, the private property owner bears the costs associated with the inadvertent discovery of human remains (Section 191.057).

Penalties for disturbing or failing to report human remains

Section 28.03.f of the Texas Penal Code states that “damaging or destroying a human burial site is a state jail felony.”

Further, Section 42.08.a.1 of the Texas Penal Code states that the penalty for anyone who “intentionally or knowingly disinters or disturbs a human corpse” is a Class A misdemeanor.

Wisconsin

Definition of a cemetery

Section 12.70.11(13) of Wisconsin Act 316 defines cemeteries as “land owned by cemetery associations and used exclusively as public burial grounds and tombs and monuments therein, and privately owned burial lots; land adjoining such burial grounds owned and occupied exclusively by the association for cemetery purposes; personal property owned by any cemetery association necessary for the care and management of burial grounds; burial sites and contiguous lands which are cataloged under s. 157.70(2)(a).”

Statewide inventory of graves and cemeteries

Chapter 157.70(2) states that the director of the state historical society will identify and catalogue burial sites in the state.

Reporting inadvertent discoveries of human remains

Wisconsin law requires that all persons report the disturbance of a burial site to the director of the state historical society or to the state historic preservation officer (Chapter 157.70.3).

Inadvertent discovery process

If an uncataloged burial site is reported to the director, the director will notify the property owner and other interested parties about the discovery (Chapter 157.70.4.a). Once the state notifies the property owner, the property owner cannot disturb the burial site without permission from the director (Chapter 157.07.4.b). If the property owner is planning a land use activity, the director will determine if the activity will adversely impact the burial site (Chapter 157.07.4.c.1). If the director is satisfied that the activity will not have an impact on the burial site and no one has objected, the property owner can proceed with the activity (Chapter 157.07.4.c.2). If the director determines that the activity will have a negative impact on the burial site, or an interested party has objected to the activity, the property owner cannot proceed with the project (Chapter 157.07.3). However, the project can proceed if the property owner allows the director or a qualified archaeologist thirty days to excavate the burial site to remove and analyze any human remains and objects related to the burial site (Chapter 157.07.3.a), or redesigns the project to avoid the burial site (Chapter 157.07.4.c.3.b). After one of these measures is completed to the director’s satisfaction, the property owner can proceed with the project (Chapter 157.07.4.d).

Identification of human remains

If a coroner or medical examiner is contacted regarding a death and determines that the human remains are of non-forensic interest, they will contact the director of the historical society (Chapter 979.01.1.r of Section 22).

Incentives for reporting the discovery of human remains

The director of the state historical society is authorized to “make recommendations concerning burial sites on private property for acquisition by the state or other public agencies to preserve the burial sites” (Chapter 157.70.c).

Wisconsin also utilizes conservation easements to assist in preserving burial sites (Chapter 700.40.1.a).

Funding for the inadvertent discovery of human remains

Wisconsin has developed two classes of burials: cataloged and uncataloged. If a person or agency disturbs a cataloged burial site, they shall pay the cost of reburial, cremation or curation of the human remains (HS 2.05.8).

If an inadvertent discovery of an uncataloged burial site occurs and it is not feasible to leave the burial in place, the director of the state historical society has thirty days to excavate and analyze the remains at no cost to the landowner. If the director cannot complete the work within the landowner's timeframe, the landowner can hire a qualified archaeologist and skeletal analyst at their own expense (HS 2.04.12.b).

Penalties for disturbing or for failing to report human remains

Anyone who does not report the disturbance of a burial site will be fined "not less than \$500 and no more than \$1,000" (Chapter 157.70.10.a).

Input from Stakeholders and Affected Communities

In order to gather information about current grave and cemetery protections from those responsible for or affected by the protections, members of the Study Team attended two open forums convened by Representative John McCoy, conducted a series of discussion groups, and reviewed written comments. Information was gathered during forty-one interactions represented by the following categories: State Legislators (2); Open Forums (2); State/County Government Agencies, including attendance at a Mason County Superior Court hearing (7); Tribal Governments, including individual and group meetings and a tribal lobbyist (14); Professional Associations (11); and Citizens, including advocates, professionals, and groups (5). Some overlap between categories occurred as many participants were represented at both individual meetings and at the open forums. Also, in terms of Tribal Governments, members of the Study Team gathered information from both individual tribes (8 Washington tribes, 1 Oregon tribe, 1 Idaho tribe) and from a group meeting of tribal chairpersons (7 tribes represented); in all, members of the Study Team gathered information from 15 individual tribes (13 Washington tribes, 1 Oregon tribe, 1 Idaho tribe).

Participating stakeholders and affected communities reflect the wide range of people engaged in the issue of grave and cemetery protection. Despite the seemingly disparate values and interests of the participants, a number of common themes, common issues, and proposed solutions emerged upon review of the input provided. While a detailed statistical analysis of the information was beyond the scope of this project, seven common themes, twenty-one common issues, and twenty-three proposed solutions were noted. Common responses ranged in frequency from three to twenty-nine. A list and brief description of common themes, issues, and proposed solutions follows.

Common Themes

Graves and cemeteries should be respected

It is commonly accepted that respect for human remains and the graves and cemeteries where they are found is a fundamental value of nearly every culture. Input provided by the participants supports this statement. The shared value of respect for human remains and graves and cemeteries represents critical common ground in the often-divisive issue of grave and cemetery protection.

Everyone has a responsibility to protect graves and cemeteries, although specific notions of “protection” differ according to factors such as cultural value systems and economic interests

While participants generally agreed that everyone is responsible for grave and cemetery protection, “protection” means different things to different people. Notions of protection that were discussed included: leaving human remains in place and redesigning proposed development projects to avoid impacting them; removing human remains and reintering them elsewhere; and automatically dedicating all graves and cemeteries, thereby requiring project proponents to address potential impacts by completing the removal of dedication process and, if the grave or cemetery is also an archaeological site, by obtaining and fulfilling the terms of an Archaeological Excavation Permit issued by DAHP.

Trust between stakeholders and affected parties must be established

In order to successfully address the shortcomings of the system of grave and cemetery protections, trust must be established between the State Government and Tribal Governments and between the State and its citizens. The grave and cemetery issue itself is shaped by conflicting value systems, and the current system of protections lacks effective guidelines for resolving these conflicts. As a result, a series of unsatisfactory outcomes has led to a lack of trust between the parties.

All parties, including their leadership, must commit the time, effort, and resources necessary to making meaningful and lasting changes to the system of grave and cemetery protection

Establishing trust takes time. If the goal is to establish a system of protections that will better serve the deceased and their descendants or advocates, as well as all the citizens of Washington State, then consultation and collaborative policy-making must occur. The momentum created by such a process will facilitate later steps.

Proposed legislation should strengthen and not weaken current protections

Stakeholders and affected communities stated that effectively protecting graves and cemeteries within the current system is difficult, and many would like to see greater levels of protection established. Any legislative change resulting from consideration of this study, therefore, should strengthen grave and cemetery protections and not weaken them.

The system of grave and cemetery protection must be predictable in order for citizens to participate

If the system of protections is unpredictable, people will not participate in the protection of known or inadvertently discovered graves and cemeteries. A number of participants reported a general fear among property owners that reporting known or inadvertently discovered graves and

cemeteries will result in the loss of use or a taking by the State or a tribe. If a predictable process with clear timelines and adequate funding exists, people will be more confident about participating. Predictability, therefore, represents the most basic incentive available for encouraging the protection of graves and cemeteries.

Protections are needed for both known and inadvertently discovered graves and cemeteries

The overwhelming majority of input provided by participants was related to the protection of inadvertently discovered graves and cemeteries; however, participants also recognized the need for better protection of known graves and cemeteries. A complete, effective system must address both types of graves and cemeteries.

Common Issues

Scattered, unclear, and confusing regulations

Participants identified a number of regulatory disconnects, particularly between RCW 27.44 (Indian Graves and Records Act), RCW 68.60 (Abandoned and Historic Cemeteries and Historic Graves Act), and Title 68 RCW (Cemeteries, Morgues, and Human Remains). For example, many basic definitions differ between regulations, including those for “human remains” and “cemetery,” which, in turn, has led to jurisdictional uncertainties. Also, reporting a dead body to the county coroner or medical examiner is mandatory at RCW 68.50.020, but reporting disturbances of Indian burial sites and historic graves is voluntary at RCW 27.44.030. Confusion regarding how to fulfill the policy statements in the RCW also exists, perhaps because corresponding procedural steps have not been established in the WAC or in agency guidelines.

Protections are different in RCW 27.44 (Indian Graves and Records Act) and RCW 68.60 (Abandoned and Historic Cemeteries and Historic Graves Act)

Participants identified a number of differences in the protections established in RCW 27.44 and RCW 68.60. For example, RCW 27.44 provides for civil action by an Indian tribe or tribal member, but civil actions at RCW 68.60 must be made in the name of the State Cemetery Board. Most participants agreed that maximum available protections should be extended to both categories of graves and cemeteries.

Automatic dedication of cemeteries (including historic and abandoned) and historic graves is established at RCW 68.60.020 but is not established for Indian graves in RCW 27.44

Many participants stated that automatic dedication is an important protection, particularly for cemeteries without an advocate to carry out dedication with the county, as removal or use of a dedicated cemetery is dependent on completion of the removal of dedication process. Automatic dedication, however, does not compel the landowner to record a cemetery with the county, and if the cemetery is not recorded, it will likely not appear in an inventory. Some participants stated that it should be the landowner’s choice whether or not to dedicate a cemetery on their property, while others stated that a cemetery should be considered a cemetery even if it is not formally recorded at the county.

No statewide inventory of known graves and cemeteries

Many participants stated that effective protection of known graves and cemeteries begins with centralizing existing locational information. Without a centralized inventory, it is difficult or

impossible to apply information about known graves and cemeteries to preventive measures, such as a permit review process. In addition to maintaining and updating an inventory, rules governing access to and use of the information must accompany it.

No access to private property

A number of participants stated that protection of graves and cemeteries is much more difficult when access to private property is denied. Protective measures, such as inventorying, general upkeep, and responding to threatened or endangered graves and cemeteries, often require access to private property.

Variations in the capacity of local and tribal governments to participate effectively in grave and cemetery protection

According to participants, effective grave and cemetery protection requires resources in the form of funding and professional expertise. Small local governments and tribal governments may not have the resources necessary to participate in the system of protections in a sustainable manner. The existence of stakeholders and affected communities without the ability to participate may cause breakdowns in the system or significantly slow processes.

Disincentives characterize the current system of grave and cemetery protections

Participants discussed a number of disincentives faced by those responsible for or affected by the current system of protections. Examples of disincentives include the following: those reporting inadvertent discoveries often have to pay for the response process; no funding has been appropriated to DAHP to assist with reinterment of inadvertently discovered remains; no timelines are established for responding to inadvertent discoveries; and incentives for dedicating known or for leaving in place inadvertently discovered graves and cemeteries are not clearly articulated. The lack of a predictable process also serves as a disincentive for responsible agencies and tribes as decision-making is often a “negotiated process” conducted on a case-by-case basis and relying on the maintenance of good relationships between often-strained parties.

No directive for reporting the discovery of human remains in RCW 68.60 and voluntary reporting of the discovery of human remains in RCW 27.44

Current reporting requirements are as follows: reporting a dead body to the county coroner or medical examiner is mandatory at RCW 68.50.020; reporting disturbance of Indian burial sites and historic graves is voluntary at RCW 27.44.030; no directive for reporting disturbances or discoveries of abandoned and historic cemeteries and historic graves exists in RCW 68.60. Participants recognized that human remains might represent a missing person or a homicide whose relatives should be notified of their discovery; in other instances, human remains might be related to modern-day descendants who should be notified of their discovery. Many participants also noted that the penalty for not reporting is a misdemeanor at RCW 68.50.020 and stated that either the same penalty should be applied to RCW 27.44 and 68.60 or a higher penalty should be applied so people do not disregard the reporting requirement. Other participants discussed the fact that penalties might discourage reporting.

No predictable, standardized statewide process for responding to inadvertent discoveries of human remains

According to participants, current regulations include only minimal procedural steps and no timelines for responding to inadvertent discoveries of human remains. For example, although not mentioned in the regulations, DAHP often requires an archaeological assessment in order to determine whether or not additional human remains are present; while it may be prudent to conduct an assessment, the response timeline is extended often unexpectedly. Without a predictable process, decision-making is often a “negotiated process” conducted on a case-by-case basis and relying on the maintenance of good relationships between parties that are often already strained. Stakeholders and affected communities often feel marginalized and unsatisfied with the process and outcomes, and without predictability and certainty, they fear people will not report inadvertent discoveries.

No timelines established for responding to inadvertent discoveries of human remains

The lack of timelines for responding to inadvertent discoveries leads to uncertainty and represents another disincentive to reporting according to participants. Delays often lead to additional and unexpected costs for project proponents. Delays are considered undesirable and disrespectful to many descendants and advocates desiring speedy disposition, as well.

Lack of professional qualifications of those responsible for identifying human remains

Many participants discussed the fact that county coroners are elected officials, and they often lack the professional training required to identify human remains. Identification of human remains represents the first step in responding to an inadvertent discovery, so it must be accurate and timely. An unqualified individual might incorrectly identify human remains or incorrectly determine them unidentifiable, and all subsequent steps of the inadvertent discovery process would be based on incorrect information.

“Key person” often relied upon for the identification human remains

Many participants acknowledged that elected county coroners without the professional expertise to identify human remains often request assistance from the Forensic Anthropologist at the King County Medical Examiner’s Office; however, only one Forensic Anthropologist is available to the entire State. While such consultation is prudent, dependency on a “key person” can delay the identification process, and if consultation does not occur, the possibility that human remains are incorrectly identified increases. A system relying on a key person may compromise both the death investigation process should the remains represent a crime scene and the inadvertent discovery process should they represent non-forensic remains.

Destructive scientific testing of human remains is unacceptable in some value systems

Coroners and medical examiners responsible for identifying human remains typically employ scientific testing when necessary. Some participants stated that destructive testing methods should be used if non-destructive testing are not enough to identify the remains, while other participants object to destructive testing in any instance. Many states have a so-called “science clause” that permits scientific testing of human remains before they are returned to the affected community.

Not always possible to identify remains

A number of participants discussed the fact that it is not always possible to identify remains. Procedures for deciding how such remains should be treated must be established.

Mediation often falls to DAHP despite their role as a stakeholder in the process

DAHP is often expected to mediate between stakeholders, such as the project proponent, and affected communities, such as descendants and advocates (e.g. tribes, pioneer descendants, historical societies, cemetery advocates). DAHP may also be expected to mediate between two or more tribes claiming the same set of remains. However, participants pointed out that DAHP is charged with the scientific study of “archaeological resources” defined at RCW 27.53.040 as including “skeletal remains.” Many affected communities do not consider human remains archaeological resources that should be scientifically studied. This conflict of scientific and cultural values has led to strained relations between DAHP and some affected communities. Relying on a stakeholder (i.e. DAHP) to serve also as a mediator is not an effective process.

Late notification to affected tribes of an inadvertent discovery of human remains

Current regulations do not require DAHP to notify affected tribes of an inadvertent discovery of human remains, although reinterment under tribal supervision is required (RCW 27.44.040) thereby necessitating notification at some point. Some tribes indicated that they would like to be notified as soon as the identification process begins. Some tribes indicated that they prefer to be notified of inadvertent discoveries as soon as remains are determined human. Still others prefer to be notified when remains are identified as Native American. A number of participants stated that they have worked with their local coroner or medical examiner to establish notification procedures. In some of these scenarios, notification to DAHP by the coroner or medical examiner was inconsistent.

Lack of meaningful tribal consultation in the event of an inadvertent discovery of human remains

Many tribes stated that they should have a meaningful decision-making role when remains are determined Native American as protections should reflect the wishes of the descendants. Current regulations at RCW 27.44.040 appear to support this position: “Persons disturbing native Indian graves through inadvertence, including disturbance through construction, mining, logging, agricultural activity, or any other activity, shall reinter the human remains under the supervision of the appropriate Indian tribe.” Other tribes requested the opportunity to participate in decision-making from the very beginning of the inadvertent discovery process and others as soon as the remains are determined human.

Removal of inadvertently discovered human remains should not be assumed

For some participants, “protection” involves leaving remains in place and avoiding any impacts to them. A number of affected communities, including both tribes and cemetery advocates, favored a system that includes the opportunity to discuss the option of leaving remains in place rather than assuming their removal. Some participants citing the values of conservation, preservation, and protection at RCW 27.53.010 (Archaeological Sites and Resources-Declaration) stated that DAHP should be doing more to protect graves and cemeteries in place rather than permitting their removal over the objections of descendants and advocates.

Identification of descendants or advocates not always possible; descendants or advocates may choose not to participate

A number of participants discussed the fact that it is not always possible to identify descendants or advocates. Others pointed out that, if identified, descendants or advocates may choose not to participate. Procedures for deciding how such remains should be treated must be established.

Weak penalties are difficult to enforce

Many participants noted that the penalty for not reporting a dead body is a misdemeanor at RCW 68.50.020 and stated that either the same penalty should be applied to RCW 27.44 and 68.60 or a higher penalty should be applied so people do not disregard the reporting requirement. Other participants discussed the fact that penalties might discourage reporting. Collaboration with law enforcement and attorneys regarding enforcement is lacking.

No funding for known or inadvertently discovered graves and cemeteries

Many participants discussed the lack of funding available for protecting either known or inadvertently discovered graves and cemeteries. For example, funding is necessary for producing an inventory of known graves and cemeteries and for applying the information to planning efforts, such as a permit review process. In terms of inadvertent discoveries, both RCW 27.44.040 and RCW 68.60.050 contain an “unfunded mandate” that states that the costs of reinterment will be paid by DAHP to the extent the State Legislature appropriates such funds. No such funds have been appropriated, so persons reporting the discovery of remains must pay for the response, and while sundry claims are possible, they are not guaranteed. The lack of funding creates an enormous disincentive for reporting.

Proposed Solutions

Build relationships between stakeholders and affected communities

Participants agreed that grave and cemetery protection has proven to be a complex and often emotional issue due to the large number of stakeholders and affected communities, each with their own, sometimes conflicting value systems. In such an environment, building relationships based on trust and respect is essential to promoting the collaboration necessary for developing and implementing a viable system. Relationships should then be formalized through processes such as government-to-government consultation and the development of interlocal agreements. Some tribal representatives, for example, cited fulfillment of the Centennial Accord as an appropriate means of furthering the relationship between tribal and State governments.

Clarify definitions

In order to address a number of confusing regulatory disconnects, participants suggested a cleanup bill addressing different and sometimes conflicting definitions and related jurisdictional uncertainties. Definitions requiring clarification included those for “human remains,” “burial,” “cemetery,” “skeletal remains,” “bodies,” and the so-called “five or more rule” at RCW 68.60.010 (Abandoned and Historic Cemeteries and Historic Graves).

Inventory known graves and cemeteries

In order to protect known graves and cemeteries, participants recognized the importance of conducting an inventory to establish a baseline of information. A centralized inventory could

then be used for pre-project planning and review of permit applications with the potential to impact graves and cemeteries (e.g. shoreline permits). Most participants suggested that DAHP coordinate and maintain the inventory, perhaps in a manner similar to that for maintaining the statewide database of archaeological sites. Procedures governing access to and use of the information and ensuring confidentiality of the information might also mirror procedures governing the archaeological database.

Retain automatic dedication in RCW 68.60

Many participants considered dedication an important level of protection for cemeteries, and whether or not a cemetery has been formally recorded at the county, it should be treated as a cemetery. Some participants suggested the “five or more rule” at RCW 68.60.010 be changed to reflect the definition used by the State Cemetery Board so that abandoned and historic cemeteries containing less than five graves receive the protection of automatic dedication. Other participants suggested that automatic dedication be extended to RCW 27.44 so that Indian graves and burial grounds also receive the protections associated with dedication.

Establish positive incentives for leaving graves and cemeteries in place rather than removing

Participants recognized that positive incentives are necessary in order to encourage property owners to leave graves and cemeteries in place rather than remove them. To be effective, the incentives must outweigh the costs of abandoning the use of the property or a proposed project. Possible incentives include a property tax exemption (cemetery property is already tax-exempt as per RCW 68.24.240, so expansion of the cemetery definition would facilitate availability of this option), an easement option, or classification as open space for valuation at current use rather than highest and best use.

Establish statewide permit review process to protect known and to identify potential graves and cemeteries

Pre-project planning through a permit review process represented an important preventive measure to many participants. The proposed inventory of known graves and cemeteries and the DAHP archaeological database could be used to identify the presence of graves and cemeteries, as well as potential impacts to them. Local and tribal governments could send information to DAHP to be used during permit review; tribal information might include maps of areas of interest. Funding might be provided on a pass-through basis much like the Certified Local Government program. Corresponding procedures, including those for ensuring confidentiality of sensitive information, could be established in the WAC. Participants proposed the following as a step in the permit review process:

Require pre-project archaeological assessments as part of the statewide permit review process

Many participants cited the fact that pre-project archaeological assessments can only be recommended and not required. DAHP and tribes, as well as some local governments, typically recommend the assessments during the permit review process. The authority to require assessments when justified would assist in identification of graves and cemeteries prior to construction and prevention of inadvertent discoveries. Data gathered could be added to the DAHP database of archaeological sites and, if graves and cemeteries are identified, to the proposed inventory of known graves and cemeteries.

Support tribal programs and local governments with the capacity to participate in the grave and cemetery protection and those building the required capacity

Participants generally agreed that an effective system of grave and cemetery protections depends on stakeholders and affected communities possessing the capacity required to participate in a meaningful and sustainable manner. Some participants suggested that State assistance be provided to tribal programs and local governments for building capacity.

Require mandatory reporting of discoveries of human remains

Many participants stated that reporting discoveries of human remains should be mandatory and not voluntary in both RCW 27.44 and RCW 68.60. Not only would this provide consistency with RCW 68.50.020 requiring reporting of dead bodies to the county coroner, it would also support the shared value of respect for human remains. Mandatory reporting requires a predictable response process so that people know how to report discoveries and agencies agree on jurisdiction over the various steps of the subsequent response (see next proposed solution).

Establish a standardized statewide process for responding to inadvertent discoveries of human remains

Participants agreed that a standardized statewide process for responding to inadvertent discoveries of human remains would provide much-needed predictability and certainty for those reporting and for the stakeholders and affected communities responding. A predictable process represents a critical incentive for consistent reporting of discoveries of human remains. The statewide process, established in the WAC, should provide the basic framework, while specifics should be established on the local level. The inadvertent discovery process should be based on “best practices.” Proposed individual steps in the process were as follows:

1) Call 911 to report inadvertent discoveries of human remains

According to current regulations, law enforcement assumes primary jurisdiction of human remains as they may represent a missing person or a homicide. Law enforcement manages the discovery as a crime scene by providing security, preventing contamination of the scene by controlling access, and controlling media coverage. Some participants discussed the option of providing confidential reporting as through a hotline.

2) Establish a statewide Physical Anthropologist to ensure proper identification of remains

A number of participants supported the establishment of a statewide Physical Anthropologist to address the lack of professional qualifications of some elected coroners. The Physical Anthropologist would be available to any jurisdiction requiring assistance. Currently, the Forensic Anthropologist in the King County Medical Examiner’s Office serves as the *de facto* statewide Physical Anthropologist, so many participants supported a transition to establishing an official position. Over time, additional officers could be added to address the “key person” situation.

3) Notify and consult with affected tribes when remains are of interest

Many participants agreed that notification and consultation with affected tribes should occur when the remains are identified as Native American. Some tribes requested notification as soon as the remains were identified as human or as soon as the

identification process begins. Currently, if remains are identified as non-forensic, DAHP assumes jurisdiction from the coroner or medical examiner. If the remains are Native American, DAHP then notifies the affected tribe(s). Participants suggested a variety of ways to identify affected tribes, such as consulting tribally generated maps of areas of interest, following NAGPRA guidelines, and consulting Indian Claims Commission maps. Many tribes have codes of law and procedural manuals guiding notification and consultation, and these should be incorporated into DAHP procedures.

4) Grant affected tribe primary authority when remains are identified as Native American

According to a number of participants, human remains should be cared for according to the wishes of the descendants as they have a responsibility to care for the remains according to their cultural value system. Many tribal representatives explained that remains are viewed as people, not as mere bones. When remains are identified as Native American, many participants stated that tribes should assume primary decision-making authority. If State law continues to define skeletal remains archaeological resources, DAHP would still be involved as the State agency charged with regulating such resources.

5) Establish a State inter-agency cultural resource team

Some participants suggested that the State establish an inter-agency cultural resource team to address cultural resources issues, including grave and cemetery protection. The State Historic Preservation Officer should be a member of the team.

6) Establish a statewide Native American commission to address issues concerning Native American remains

Some participants discussed the establishment of a statewide Native American commission to assist with identification of the appropriate affected tribe, settling disagreements concerning a plan of action in the event of an inadvertent discovery, and developing a plan of action for unidentifiable remains and remains for which there is no advocate.

7) Establish a formal mediation process in the event agreement on a plan of action cannot be reached

Currently, no formal mediation process exists in the event stakeholders and affected communities cannot agree to a plan of action for responding to an inadvertent discovery. With a mediation process, DAHP would not be expected to serve as both stakeholder and mediator. Formal mediation served as the mechanism for reaching resolutions in several high-profile cases, including the Washington State Department of Transportation's graving dock on the Port Angeles waterfront (2003) and the City of Blaine's wastewater treatment plant expansion on the Semiahmoo Spit (1999).

8) Establish a plan of action for human remains for which there is no advocate

A number of stakeholders recognized that an advocate might not be identified for every set of inadvertently discovered remains. Currently, DAHP has jurisdiction of non-forensic remains (i.e. historic or Native American remains). However, DAHP does not serve as a repository for remains, and State law requires reburial or cremation (RCW

68.50.110). The law does not appear to encourage the curation of human remains, so a plan of action is needed describing how the remains are to be treated and, if they are to be reinterred, where and how that will occur.

9) Establish timelines

Participants generally agreed that timelines should be established for the various steps in the inadvertent discovery process. Suggested steps and, where possible, suggested timelines were as follows: reporting discoveries (immediately upon discovery); law enforcement response (immediately upon report of discovery); coroner/medical examiner response (immediately upon notification by law enforcement); identification (depends upon the discovery); notification to DAHP (immediately upon identification as non-forensic); DAHP notification to affected communities and Cemetery Board (immediately upon notification by law enforcement and identification of affected communities); consultation (depends upon the stakeholders and affected communities); mediation, if necessary (perhaps within a certain time of beginning consultation); implementation of a plan of action (depends upon the plan agreed to by the stakeholders and affected communities).

Enforce the existing penalties in RCW 27.44 and RCW 68.60 and any new penalty for not reporting

Many participants proposed equivalent criminal and civil penalties RCW 27.44 and RCW 68.60 and coordination with law enforcement so that the penalties are enforced.

Authorize funding for grave and cemetery protection

Participants generally agreed that funding is required to support an effective, sustainable system of grave and cemetery protection. Funding was proposed for the unfunded mandates in RCW 27.44 and RCW 68.60 so that those reporting do not have to pay; a statewide inventory of known graves and cemeteries; and planning efforts with local and tribal governments, including a permit review process and inadvertent discovery planning.

Require developer and proponents to provide funding for offsetting the costs associated with future inadvertent discoveries of human remains

Some participants proposed cost sharing by developers so that the costs were not borne solely by the State or by stakeholders and affected communities. For example, an impact fee could be paid into a revolving fund that would serve as insurance in the event of an inadvertent discovery.

Launch an educational campaign for leadership, professionals, and the public

Participants generally agreed that education is critical to the establishment of an effective system of grave and cemetery protection. DAHP could provide coordination of an education campaign for leadership (e.g. State, tribal, local), professionals (e.g. law enforcement, coroner and medical examiners, attorneys, archaeologists, developers), and the public (e.g. property owners, cemetery advocates). Education regarding mandatory reporting could be modeled after the “call before you dig” campaign. Education should create greater awareness of the issue and present a work plan for developing and implementing solutions. Education should inform people that the State is committed to establishing a predictable process. Education should also promote respect for human remains and cultural value systems.

RECOMMENDATIONS

Within the first month of the contract period (August 2007), regulatory research and input from participating stakeholders and affected communities confirmed the Study Team's expectation that the creation and implementation of viable, long-term solutions to all of the issues currently affecting grave and cemetery protection in Washington State requires further discussion and collaboration than was possible during the four-month timeframe afforded the Study. This observation was shared with Dr. Brooks, DAHP, and Mr. Bill, GOIA, on several occasions and with Senator Haugen and Representative McCoy during the first week of September just prior to the second Open Forum.

Recognizing the complexity of the issues and the extensive number of stakeholders and affected communities, the Legislators requested that the Study Team's recommendations include: 1) a list of solutions that might be addressed during the next legislative session, and 2) a list of solutions requiring further discussion and collaboration as described in a two to three year work plan.

Based upon the results of the regulatory research and the input from participating stakeholders and affected communities, the Study Team respectfully submits the following recommendations to DAHP and the State Legislature.

Solutions to be Addressed During the Next Legislative Session

1) Declaration section to accompany proposed legislation

Grave and cemetery protection has proven to be a complex and often emotional issue due to the large number of stakeholders and affected communities, each with their own, sometimes conflicting value systems. In such an environment, building relationships based on trust and respect is essential to promoting the collaboration necessary for developing and implementing a viable system. Leadership, including the State Legislature, can build trust and respect between parties by identifying common ground and agreeing to move forward together on the issue. For example, the shared value of respect for human remains and graves and cemeteries represents critical common ground in the often-divisive issue of grave and cemetery protection.

In order to begin building relationships based on trust and respect and to move forward together on the issue of grave and cemetery protection, it is recommended that the following statements be considered for inclusion in a declaration section to accompany proposed legislation: all graves and cemeteries should be respected; all citizens have a responsibility to respect graves and cemeteries; respect for graves and cemeteries is often expressed according to cultural values which should also be respected; when determining specific protective measures for graves and cemeteries, descendants should be identified and included in decision-making whenever possible.

2) Clarify definitions and related jurisdictional uncertainties in a cleanup bill

Regulatory disconnects in the form of scattered definitions and related jurisdictional uncertainties have led to an unpredictable and confusing system of grave and cemetery protections. Definitions requiring clarification include those for "human remains" at RCW 68.04.020, "burial" at RCW 68.04.140, "cemetery" at RCW 68.04.040, "skeletal remains" at

RCW 27.53.040, “bodies” at RCW 68.50.010, and the so-called “five or more rule” at RCW 68.60.010. Related jurisdictional uncertainties include questions about jurisdiction over human remains in the event of an inadvertent discovery. For example, law enforcement and the coroner or medical examiner have jurisdiction over human remains until they are determined non-forensic at which time jurisdiction is transferred to DAHP and notification to the State Cemetery Board occurs. Also, upon removal of dedication at RCW 68.24.090(3), notification is made to both DAHP and the State Cemetery Board. It is the Study Team’s understanding that legislative staff have been considering the specific content of such a cleanup bill.

3) Inventory known graves and cemeteries

A statewide inventory of known graves and cemeteries is recommended in order to establish a centralized baseline of information. DAHP is the State agency recommended for coordinating and maintaining the inventory in a manner similar to that for maintaining the statewide database of archaeological sites. Procedures for maintaining, accessing, and ensuring confidentiality of the inventory are necessary and can also be based upon current procedures governing the statewide archaeological database. It is also recommended that the inventory procedures established by Iowa, Minnesota, and Oregon be examined as possible models.

4) Require mandatory reporting of discoveries of human remains

It is recommended that reporting discoveries of human remains be made mandatory in both RCW 27.44 and RCW 68.60. Not only will this provide consistency with RCW 68.50.020 requiring reporting of dead bodies to the county coroner, it will also support the shared value of respect for human remains. It is recommended that the penalty for not reporting be a misdemeanor for consistency with RCW 68.50.020. Mandatory reporting requires a predictable process so that people know how to report discoveries and agencies agree on jurisdiction over the various steps of the subsequent response (see next recommendation).

5) Establish a standardized statewide process for responding to inadvertent discoveries of human remains

A standardized statewide process for responding to inadvertent discoveries of human remains is recommended, as it will provide much-needed predictability and certainty for those reporting and for the stakeholders and affected communities responding. A standardized and, therefore, predictable process also represents a critical incentive for consistent reporting of discoveries of human remains. It is also recommended that the statewide process provide a basic framework while specifics are established on a local level between the stakeholders and affected communities directly involved. During the next legislative session, the following steps addressing reporting, identification, and notification are recommended (steps for consultation and implementation are recommended for further discussion and are included at item 5 of the next section):

a) Call 911 to report inadvertent discoveries of human remains

According to current regulations, law enforcement assumes primary jurisdiction of human remains in order to rule out missing persons and homicides. Law enforcement manages the discovery as a crime scene by providing security, preventing contamination of the scene by controlling access, and controlling media coverage.

b) Establish and fund a statewide Physical Anthropologist to ensure proper identification of remains

Establishment of a statewide Physical Anthropologist to assist all jurisdictions requiring assistance with the identification of human remains is recommended. A statewide position will address the fact that many elected coroners currently rely on the Forensic Anthropologist in the King County Medical Examiner's Office for assistance with the identification of human remains.

c) Notify and consult with affected tribes when remains are of interest

It is recommended that notification and consultation with affected tribes occur as soon as human remains are identified as Native American. It is also recommended that tribal codes of law and procedural manuals guiding notification and consultation be incorporated into DAHP's procedures.

d) Establish timelines for reporting, identification, and notification (timelines for consultation and implementation are recommended for further discussion and are included in the next section)

Recommended timelines for reporting, identification, and notification are as follows: reporting discoveries (immediately upon discovery); law enforcement response (immediately upon report of discovery); coroner/medical examiner response (immediately upon notification by law enforcement); identification (commence identification within twenty-four hours of coroner/medical examiner response, total time required will depend upon the discovery); notification to DAHP (immediately upon identification as non-forensic); DAHP notification to affected communities and Cemetery Board (identify and notify affected communities within twenty-four hours of notification by law enforcement, notify Cemetery Board immediately upon notification by law enforcement). While the recommended timelines do not establish an exact timeframe for reporting, identification, and notification in terms of hours or days, they do represent the reality of the situation as shared by participants currently responsible for the steps.

6) Enforce the existing penalties in RCW 27.44 and RCW 68.60 and any new penalty for not reporting

Enforcement of the criminal and civil penalties in RCW 27.44 and RCW 68.60 is recommended. The penalties are based on knowing disturbance; accidental or inadvertent disturbance that is reported is not considered a violation. Coordination with law enforcement and attorneys will facilitate enforcement.

7) Authorize funding for grave and cemetery protection

Funding is recommended for the following: the unfunded mandates in RCW 27.44 and RCW 68.60 stating that the expenses of reinterment shall be paid by DAHP; a statewide inventory of known graves and cemeteries; and planning efforts with local and tribal governments, including a permit review process and inadvertent discovery planning.

8) Launch an educational campaign for leadership, professionals, and the public

Education is critical to the establishment of an effective system of grave and cemetery protection. It is recommended that DAHP provide coordination of an education campaign for

leadership (e.g. State, tribal, local), professionals (e.g. law enforcement, coroner and medical examiners, prosecuting attorneys, archaeologists, developers), and the public (e.g. property owners, cemetery advocates). It is also recommended that the educational campaign create greater awareness of the issue, present the State's work plan for developing and implementing solutions, inform people that the State is committed to establishing a predictable process, and promote respect for human remains and cultural value systems.

Solutions Requiring Further Discussion and Collaboration

1) Build relationships between stakeholders and affected communities

(Timeline: 2008-2009)

Participants agreed that grave and cemetery protection has proven to be a complex and often emotional issue that is furthered complicated by a large number of stakeholders and affected communities, each with their own, sometimes conflicting value systems. In such an environment, building relationships based on trust and respect is essential to promoting the collaboration necessary for developing and implementing a viable system. It is recommended that the establishment of such relationships be pursued and that resulting relationships be formalized through processes such as government-to-government consultation and the development of interlocal agreements.

2) Discuss the retention and expansion of automatic dedication in RCW 68.60

(Timeline: 2008)

Automatic dedication represents a level of cemetery protection due to the fact that use of a dedicated cemetery for purposes other than the placement of human remains is dependent upon completion of the removal of dedication process. However, some study participants suggested dedication should be the landowner's choice; other participants suggested changing the "five or more rule" at RCW 68.60.010 to reflect the definition used by the State Cemetery Board so that abandoned and historic cemeteries containing less than five graves receive the protection of automatic dedication. It was also suggested that automatic dedication be extended to RCW 27.44 so that Indian graves and burial grounds receive the protections associated with dedication.

3) Establish positive incentives for leaving graves and cemeteries in place rather than removing

(Timeline: 2008-2009)

Positive incentives are recommended in order to encourage property owners to leave graves and cemeteries in place rather than remove them. The incentives must outweigh the costs of abandoning use of the property or a proposed project in order to be effective. Possible incentives include a property tax exemption (cemetery property is already tax-exempt as per RCW 68.24.240, so expansion of the cemetery definition would facilitate availability of this option), an easement option, or classification as open space for valuation at current use rather than highest and best use via the Open Space Taxation Act (RCW 84.34 and WAC 458-30).

4) Establish statewide permit review process to protect known and to identify potential graves and cemeteries

(Timeline: 2008-2009)

Pre-project planning through a permit review process is recommended as an effective preventive measure. Locational information available for conducting permit review would include the

proposed inventory of known graves and cemeteries, the DAHP archaeological database, and information shared by local and tribal governments and by cemetery advocates. It is recommended that corresponding procedures, including those for ensuring confidentiality of sensitive information, be established in the WAC. A proposed step of the permit review process is as follows:

a) Authorize DAHP and local governments to require pre-project archaeological assessments as part of the statewide permit review process

(Timeline: 2008-2009)

Currently, pre-project archaeological assessments can only be recommended and not required. DAHP and tribes, as well as some local governments, typically recommend the assessments during various review processes (e.g. SEPA, Shoreline Management Act). It is recommended that DAHP and local governments be granted the authority to require assessments when justified. Assessments would assist in identification of graves and cemeteries prior to construction thereby reducing the number of inadvertent discoveries. Data gathered would be added to the DAHP database of archaeological sites and, if applicable, to the proposed inventory of known graves and cemeteries.

5) Establish a standardized statewide process for responding to inadvertent discoveries of human remains

A standardized statewide process for responding to inadvertent discoveries of human remains is recommended, as it will provide much-needed predictability and certainty for those reporting and for the stakeholders and affected communities responding, and it represents a critical incentive for consistent reporting of discoveries of human remains. It is also recommended that the statewide process provide a basic framework while specifics are established on a local level between the stakeholders and affected communities immediately involved. Recommended steps for consultation and implementation are as follows (steps for reporting, identification, and notification are recommended for the next legislative session and are included in the previous section):

a) Grant descendants a meaningful role in the decision-making process

(Timeline: 2008-2009)

It is recommended that human remains be cared for according to the wishes of the descendants as they have a responsibility to care for the remains according to their cultural value system. When remains are identified (e.g. Native American, pioneer), the descendants should be granted a meaningful role in the decision-making process. If State law continues to define skeletal remains archaeological resources, DAHP would still be involved as the State agency charged with regulating such resources.

b) Establish a formal mediation process in the event agreement on a plan of action cannot be reached

(Timeline: 2008)

Currently, no formal mediation process exists in the event stakeholders and affected communities cannot agree to a plan of action for responding to an inadvertent discovery. With a mediation process, DAHP would not be expected to serve as both stakeholder and mediator. Formal mediation served as the mechanism for reaching resolutions in several

high-profile cases, including the Washington State Department of Transportation's graving dock on the Port Angeles waterfront (2003) and the City of Blaine's wastewater treatment plant expansion on the Semiahmoo Spit (1999).

c) Discuss establishment of a statewide Native American commission to address issues concerning Native American remains

(Timeline: 2008-2009)

Some participants discussed the establishment of a statewide Native American commission to assist with identification of the appropriate affected tribe, settling disagreements concerning a plan of action in the event of an inadvertent discovery, and developing a plan of action for unidentifiable remains or remains for which there is no advocate. Models for such a commission exist in California, Iowa, Minnesota, and Oregon.

d) Establish a plan of action for human remains for which there is no advocate

(Timeline: 2008-2009)

An advocate might not be identified for every set of inadvertently discovered remains. Currently, DAHP has jurisdiction of non-forensic remains (i.e. historic or Native American remains). However, DAHP does not serve as a repository for remains, and State law requires reburial or cremation (RCW 68.50.110). The law does not appear to encourage the curation of human remains, so a plan of action is needed describing how the remains are to be treated and, if they are to be reinterred, where and how that will occur. The plan of action will also serve coroners and medical examiners in the event that remains transported to their offices for identification are determined non-forensic but no advocate can be located.

e) Establish timelines for consultation and implementation (timelines for reporting, identification, and notification are recommended for the next legislative session and are included in the previous section)

(Timeline: 2008)

Possible timelines for consultation and implementation are as follows: consultation (within forty-eight hours of all stakeholders and affected communities receiving notification); mediation, if necessary (within ten days of beginning consultation); implementation of a plan of action (within ten days of beginning consultation or mediation and/or according to the plan agreed to by the stakeholders and affected communities).

6) Discuss a requirement that developers and proponents provide funding for offsetting costs associated with future inadvertent discoveries of human remains

(Timeline: 2009)

It is recommended that cost sharing with developers be examined so that the costs of responding to inadvertent discoveries are not borne solely by the State or by the stakeholders and affected communities. For example, an impact fee paid into a revolving fund could be used in the event of future inadvertent discoveries.

CONCLUSIONS

Through support of this study, the State Legislature has created a legitimate opportunity to improve the system of grave and cemetery protection in Washington State. The complexity of the issue in terms of the number of stakeholders and affected communities, their value systems regarding respect for the deceased, and the relationship to increasing population and a corresponding increase in the rate of development requires that the Legislature and the participants commit to working collaboratively on effective, long-term solutions.

While the study period did not allow for the resolution of all issues, positive momentum was established with a wide range of stakeholders and affected communities through respectful discussion and exchange of ideas. The results of this exchange are reflected in the findings and in the recommendations, in particular, where a plan for addressing outstanding issues is presented for consideration.

In order to develop and implement lasting solutions, the Study Team recommends that the State Legislature establish a process for discussing the findings and recommendations with the stakeholders and affected communities. By enlisting the input of those invested in the system of protections, a work plan that is acceptable to and supported by all the parties can be established, and a system that will better serve the entire State can be created.

Implementation of the recommendations will improve the protection of Washington State's graves and cemeteries and result in a system of protections that will better serve stakeholders and affected communities. Early identification and planning will reduce the number of inadvertent discoveries occurring during development projects, both public and private. In the event that an inadvertent discovery does occur, a predictable process and adequate funding will result in significant savings of time and money, improved confidence in State policies and regulations, the protection of finite and irreplaceable resources, and a more responsive and respectful system of grave and cemetery protection. Collaboration between the State Legislature and the stakeholders and affected communities will further the current effort to fulfill the shared responsibility to protect the graves and cemeteries of Washington State.

APPENDICES

Appendix A: Participating Stakeholders and Affected Communities

Appendix B: Handout Provided to Each Participant

Appendix C: Written Comments From the Yakama Nation

APPENDIX A: Participating Stakeholders and Affected Communities

Open Forums and Discussion Groups (listed chronologically)

Tribal Task Force for Indian Graves Bill
June 18, 2007
Shelton, WA

Approximately 25 attendees at the start of the meeting, including:

Frances Charles, Chairwoman, Lower Elwha Klallam Tribe
Leonard Forsman, Chairman, Suquamish Tribe
Rhonda Foster, Squaxin Island Tribe
Justine James, Quinault Indian Nation
Sarah Johnson, Samish Indian Nation
Dennis Lewarch, Suquamish Tribe
Camille Pleasants, Confederated Tribes of the Colville Reservation
David Powell, Yakama Nation
Larry Ross, Squaxin Island Tribe
Jefferey Thomas, Puyallup Tribe of Indians
Cowlitz Indian Tribe represented
Tulalip Tribes represented
Mike Moran, Moran Public Affairs (lobbyist for Hoh Indian Tribe, Quinault Indian Nation, and Samish Indian Nation)
Miguel Perez-Gibson, lobbyist for Confederated Tribes of the Colville Reservation
Gabriel Galanda, Williams Kastner (law firm for Lower Elwha Klallam Tribe)
Sharon Haensley, Williams Kastner (law firm for Lower Elwha Klallam Tribe)
Colleen Jollie*, Washington State Department of Transportation
Mary Rossi*, APT-Applied Preservation Technologies
*Excused by the Task Force at 10:45am. The Task Force viewed Ms. Rossi's attendance as a conflict of interest since APT was under consideration for the Legislative Study contract.

Open Forum and Planning Meeting on the Reparation of Human Remains

July 10, 2007
Mukilteo, WA
Convened by Representative John McCoy
Moderated by former Washington Secretary of State Ralph Munro

Senator Mary Margaret Haugen
Senator Claudia Kauffman
Senator Adam Kline
Senator Eric Oemig
Representative Sam Hunt
Mac Nicholson, Senate Committee on Government Operations and Elections
Colleen Kerr, House Committee on State Government and Tribal Affairs

Lacey Homchick, Representative John McCoy's Office
Heather Lewis-Lechner, Senate Democratic Caucus

Selected attendees (complete attendance list unavailable):

Sandra Adix, Assistant Attorney General
Craig Bill, Governor's Office of Indian Affairs
Allyson Brooks, Washington State Department of Archaeology and Historic Preservation
Frances Charles, Chairwoman, Lower Elwha Klallam Tribe
Janice Ellis, Snohomish County Prosecuting Attorney
Stan Finkelstein, Association of Washington Cities
Gabriel Galanda, Williams Kastner law firm
Al Scott Johnnie, Lummi Nation
Dennis McPhee, Washington State Department of Licensing
Armand Minthorn, Confederated Tribes of the Umatilla Indian Reservation
Greg Sandstrom, Washington Association of Coroners and Medical Examiners
Kathy Taylor, King County Medical Examiner's Office
Norman Thiersch, Snohomish County Medical Examiner's Office

From legislative staff summary:

Building Trades Organizations represented
Washington State Association of Counties represented

Isaac Blum, APT-Applied Preservation Technologies (not yet under contract)
Marty Loesch, Tribal Attorney, Swinomish Indian Tribal Community (not yet under contract)
Mary Rossi, APT-Applied Preservation Technologies (not yet under contract)

Lower Elwha Klallam Tribe

July 16, 2007
Port Angeles, WA

Frances Charles, Chairwoman
Phillip L. Charles, Jr., Vice-Chairman
Verna Henderson, Secretary and Treasurer
Dennis Sullivan, Council Member
Carmen Charles, Tribal Cultural Liaison
Gabriel Galanda, Williams Kastner law firm
Sharon Haensley, Williams Kastner law firm
Isaac Blum, APT-Applied Preservation Technologies (not yet under contract)
Steve Kinley, K2 Productions (not yet under contract)
Mary Rossi, APT-Applied Preservation Technologies (not yet under contract)

Washington State Department of Licensing, Business and Professions Division, Funerals and Cemetery Program

July 23, 2007
Olympia, WA

Dennis McPhee, Program Manager
Joe Vincent, Administrator
Brad Carlson, Chairman, State Cemetery Board
Colleen Kerr, House Committee on State Government and Tribal Affairs [first hour]
Isaac Blum, APT-Applied Preservation Technologies (not yet under contract)
Mary Rossi, APT-Applied Preservation Technologies (not yet under contract)

Mason County Superior Court (hearing on removal of dedication for Slocum Cemetery)

July 23, 2007
Shelton, WA

Allyson Brooks, Washington State Department of Archaeology and Historic Preservation
Jennifer Chambers, Cultural Resource Consultants
Rhonda Foster, Squaxin Island Tribe
Glenn Hartmann, Cultural Resource Consultants
Stephenie Kramer, Washington State Department of Archaeology and Historic Preservation
Kevin Lyons, Squaxin Island Tribe
Stephanie Nichols, Squaxin Island Tribe
Larry Ross, Squaxin Island Tribe
Harry Rydell, Manke Lumber Company
Robert Johnson, Manke Lumber Company
Squaxin Island Tribe Legal Department representative
Mac Nicholson, Senate Committee on Government Operations and Elections
Colleen Kerr, House Committee on State Government and Tribal Affairs
Isaac Blum, APT-Applied Preservation Technologies (not yet under contract)
Mary Rossi, APT-Applied Preservation Technologies (not yet under contract)

Confederated Tribes of the Colville Reservation

August 7, 2007
Nespelem, WA

Andy Joseph, Jr., Business Council Member
Camille Pleasants, Tribal Historic Preservation Officer
Guy Moura, Traditional Cultural Property Supervisor
Alice Koskela, Reservation Attorney
Melissa Campobasso, Reservation Attorney
Miguel Perez-Gibson, Lobbyist
Isaac Blum, Legislative Study Team
Mary Rossi, Legislative Study Team

Washington Association of Coroners and Medical Examiners

August 10, 2007
Port Orchard, WA

Greg Sandstrom, President and Kitsap County Coroner
Isaac Blum, Legislative Study Team

Mary Rossi, Legislative Study Team

Snohomish County Medical Examiner's Office

August 14, 2007

Everett, WA

Norman Thiersch, Snohomish County Medical Examiner

Carl Wigren, Associate Medical Examiner

Isaac Blum, Legislative Study Team

Mary Rossi, Legislative Study Team

G-8 Meeting

August 16, 2007

Deming, WA

Brian Cladoosby, Chairman, Swinomish Indian Tribal Community; Legislative Study Team

Narcisco Cunanan, Chairman, Nooksack Indian Tribe

Evelyn Jefferson, Chairman, Lummi Nation

Jan Mabee, Chairman, Sauk-Suiattle Indian Tribe

Melvin R. Sheldon, Jr., Chairman, Tulalip Tribes

Tom Wooten, Chairman, Samish Indian Nation

Shawn Yanity, Chairman, Stillaguamish Tribe of Indians

Nadine Wilbur, Treasurer, Lummi Nation

William "Bill" Coleman, Council Member, Nooksack Indian Tribe

Sauk-Suiattle Indian Tribe representative

Greg LaFrance, Bureau of Indian Affairs

Isaac Blum, Legislative Study Team

Steve Kinley, Legislative Study Team

Mary Rossi, Legislative Study Team

Yurok Tribe (Klamath, CA)

August 20, 2007

Discussion conducted via telephone

Thomas Gates, Tribal Historic Preservation Officer

Isaac Blum, Legislative Study Team

Association of Washington Cities

September 4, 2007

Olympia, WA

Stan Finkelstein, Executive Director

Colleen Kerr, House Committee on State Government and Tribal Affairs

Mac Nicholson, Senate Committee on Government Operations and Elections

Isaac Blum, Legislative Study Team

Mary Rossi, Legislative Study Team

Mary Thompson, Legislative Study Team

Washington Association of County Officials

Washington State Association of Counties

September 4, 2007

Olympia, WA

Deborah Wilke, Executive Director (WACO)

Eric Johnson, Assistant Executive Director (WSAC)

Colleen Kerr, House Committee on State Government and Tribal Affairs

Mac Nicholson, Senate Committee on Government Operations and Elections

Isaac Blum, Legislative Study Team

Mary Rossi, Legislative Study Team

Mary Thompson, Legislative Study Team

Washington Farm Bureau

September 4, 2007

Lacey, WA

John Stuhlmiller, Director of State Affairs

Colleen Kerr, House Committee on State Government and Tribal Affairs

Mac Nicholson, Senate Committee on Government Operations and Elections

Isaac Blum, Legislative Study Team

Mary Rossi, Legislative Study Team

Mary Thompson, Legislative Study Team

Washington Public Ports Association

September 5, 2007

Olympia, WA

Eric Johnson, Deputy Director

Mac Nicholson, Senate Committee on Government Operations and Elections

Isaac Blum, Legislative Study Team

Mary Rossi, Legislative Study Team

Representative John McCoy

September 6, 2007

Tulalip, WA

Representative McCoy

Darrell Hillaire, Legislative Study Team

Isaac Blum, Legislative Study Team

Steve Kinley, Legislative Study Team

Mary Rossi, Legislative Study Team

Senator Mary Margaret Haugen

September 6, 2007

Utsalady, WA

Senator Haugen

Isaac Blum, Legislative Study Team

Steve Kinley, Legislative Study Team

Mary Rossi, Legislative Study Team

Mary Thompson, Legislative Study Team

Second Open Forum on Human Remains

September 11, 2007

Port Townsend, WA

Convened by Representative John McCoy

Moderated by former Washington Secretary of State Ralph Munro

Senator Claudia Kauffman

Senator Eric Oemig

Representative Kevin Van De Wege

Representative Lynn Kessler

Nova Gattman, Senator Haugen's Office

Colleen Kerr, House Committee on State Government and Tribal Affairs

Mac Nicholson, Senate Committee on Government Operations and Elections

Carl Shroeder, Representative Van De Wege's Office

Selected attendees (complete attendance list unavailable):

Sandra Adix, Assistant Attorney General

Sheriff Michael Brasfield, Jefferson County Sheriff's Office

Tim Brewer, Tulalip Tribes

Allyson Brooks, Washington State Department of Archaeology and Historic Preservation

Joy Brosier, Coeur d'Alene Tribe

Phillip L. Charles, Jr., Vice-Chairman, Lower Elwha Klallam Tribe

Andrew Cook, Building Industry Association of Washington

Ed Edwards, Beckett Point Fishermen's Club

Stand Finkelstein, Association of Washington Cities

Leonard Forsman, Chairman, Suquamish Tribe

Gabriel Galanda, Williams Kastner law firm

Sharon Haensley, Williams Kastner law firm

Keith Hansen, Beckett Point Fisherman's Club

Russell Hepfer, Council Member, Lower Elwha Klallam Tribe

James Hillaire, Lummi Nation

Al Scott Johnnie, Lummi Nation

Andy Joseph, Jr., Business Council Member, Confederated Tribes of the Colville Reservation

Stephenie Kramer, Washington State Department of Archaeology and Historic Preservation

Dennis McPhee, Washington State Department of Licensing, Funerals and Cemetery Program

Hilary Moran, Moran Public Affairs
Mike Moran, Moran Public Affairs
Deborah Munguia, Washington Forest Protection Association
Jim Parker, Jefferson County Public Utility District #1
Dana Roberts, Jefferson County Public Utility District #1 Commission
Alyson Rollins, Lummi Nation
Larry Ross, Squaxin Island Tribe
Greg Sandstrom, Washington Association of Coroners and Medical Examiners
Tamela Smart, Equinox Research and Consulting International (ERCI)
Matthew Sterner, Washington State Department of Archaeology and Historic Preservation
Sergeant Mark Toner, King County Sheriff's Office Major Crimes Unit
Dawn Vyvyan, Yakama Nation
Rob Whitlam, Washington State Department of Archaeology and Historic Preservation
Deborah Wilke, Washington Association of County Officials
Scott Williams, Washington State Department of Archaeology and Historic Preservation

Brian Cladoosby, Chairman, Swinomish Indian Tribal Community; Legislative Study Team
Darrell Hillaire, Legislative Study Team
Isaac Blum, Legislative Study Team
Steve Kinley, Legislative Study Team
Marty Loesch, Legislative Study Team
Mary Rossi, Legislative Study Team

Theresa Trebon, Historian and Legal Assistant, Swinomish Indian Tribal Community
September 13, 2007
La Conner, WA

Theresa Trebon
Isaac Blum, Legislative Study Team
Mary Rossi, Legislative Study Team

Association for Washington Archaeology (AWA) Board of Directors
September 15, 2007
Burien, WA

Tom Becker, President
Gary Wessen, Vice-President
Doug Tingwall, Secretary
Robert Kopperl, Director At-Large
Scott Williams, Director At-Large
Jackie Cooke, Director At-Large
Stephenie Kramer, DAHP representative
Mary Rossi, AWA Treasurer; Legislative Study Team

Moran Public Affairs (lobbyist for Hoh Indian Tribe, Quinault Indian Nation, and Samish Indian Nation)

September 17, 2007

Discussion conducted via telephone

Mike Moran

Isaac Blum, Legislative Study Team

Maggie Rail, cemetery advocate

September 20, 2007

Discussion conducted via telephone

Maggie Rail

Isaac Blum, Legislative Study Team

Puyallup Tribe of Indians

September 25, 2007

Tacoma, WA

Judy Wright, Tribal Historian

Cynthia Lyman, Tribal Attorney

Isaac Blum, Legislative Study Team

Steve Kinley, Legislative Study Team

Mary Rossi, Legislative Study Team

Building Industry Association of Washington

September 25, 2007

Olympia, WA

Andrew Cook, Legal Counsel

Isaac Blum, Legislative Study Team

Steve Kinley, Legislative Study Team

Mary Rossi, Legislative Study Team

Mary Thompson, Legislative Study Team

Washington Forest Protection Association

September 25, 2007

Olympia, WA

Mark Doumit, Executive Director

Peter Heide, Director of Forest Management

Isaac Blum, Legislative Study Team

Steve Kinley, Legislative Study Team

Mary Rossi, Legislative Study Team

Mary Thompson, Legislative Study Team

King County Medical Examiner's Office

September 27, 2007

Seattle, WA

Kathy Taylor, Forensic Anthropologist

Isaac Blum, Legislative Study Team

Steve Kinley, Legislative Study Team

Mary Rossi, Legislative Study Team

Tulalip Tribes

October 15, 2007

Tulalip, WA

Henry Gobin, Cultural Resources Department Manager

Richard Young, Environmental Director, Natural Resources Department

Gene Enick, Fisheries Technician II, Natural Resources Department

Theresa Sheldon, Representative John McCoy's office

Tim Brewer, Tribal Attorney

Isaac Blum, Legislative Study Team

Steve Kinley, Legislative Study Team

Mary Rossi, Legislative Study Team

Beckett Point Fishermen's Club

October 17, 2007

Port Townsend, WA

Keith Hansen, President

Patti Sahlinger, Secretary

Ed Edwards, Co-Chair for Septic Project

Isaac Blum, Legislative Study Team

Steve Kinley, Legislative Study Team

Mary Rossi, Legislative Study Team

Confederated Tribes and Bands of the Yakama Indian Nation

October 22, 2007

Toppenish, WA

Lavina Washines, Tribal Council Chairwoman

Athena Sanchey, Tribal Council and Cultural Committee Secretary

Portia Shields, Tribal Council

John Smartlowit, Tribal Council and Cultural Committee Chair

Lorena Sohappay, Tribal Council

Stella Washines, Tribal Council

Mavis Kindness, General Council

Johnson Meninick, Cultural Department Head

Mathew Tomaskin, Legislative Liaison

Kate Valdez, Tribal Historic Preservation Officer
Anita Nez, NAGPRA Coordinator
David Powell, Archaeologist
Dawn Vyvyan, Attorney
Isaac Blum, Legislative Study Team
Steve Kinley, Legislative Study Team
Mary Rossi, Legislative Study Team

Squaxin Island Tribe

October 23, 2007
Shelton, WA

Larry Ross, Cultural Resources Specialist
Darrell Hillaire, Legislative Study Team
Isaac Blum, Legislative Study Team
Steve Kinley, Legislative Study Team
Mary Rossi, Legislative Study Team

Confederated Tribes of the Umatilla Indian Reservation

October 23, 2007
Shelton, WA

Armand Minthorn, Board of Trustees Member At-Large
Darrell Hillaire, Legislative Study Team
Isaac Blum, Legislative Study Team
Steve Kinley, Legislative Study Team
Mary Rossi, Legislative Study Team

King County Landmarks Commission

October 25, 2007
Carnation, WA

Mr. Brian Rich, Chairman
Mr. Robert Weaver, Vice-Chairman
Mr. Rick Chouinard, Commissioner
Ms. Lauren McCroskey, Commissioner
Ms. Lynette Weber, Commissioner
Mr. Tom Hitzroth, Commissioner
Julie Kohler, King County Historic Preservation Officer and Commission Staff
Isaac Blum, Legislative Study Team

Washington State Department of Archaeology and Historic Preservation

October 31, 2007
Olympia, WA

Allyson Brooks, Director/State Historic Preservation Officer

Rob Whitlam, State Archaeologist
Stephenie Kramer, Assistant State Archaeologist
Scott Williams, Local Government Archaeologist
Sandra Adix, Assistant Attorney General
Alan Copsey, Assistant Attorney General
Isaac Blum, Legislative Study Team
Steve Kinley, Legislative Study Team
Mary Rossi, Legislative Study Team

Lummi Nation

November 2, 2007

Bellingham, WA

James Hillaire, Cultural Department Director
Al Scott Johnnie, Cultural Department Staff
Lena Tso, Tribal Historic Preservation Officer
Kelly Easter, Deputy Compliance Officer
Alyson Rollins, Semiahmah Project Physical Anthropologist
Darrell Hillaire, Legislative Study Team
Isaac Blum, Legislative Study Team
Steve Kinley, Legislative Study Team
Mary Rossi, Legislative Study Team

Washington Association of Realtors

November 7, 2007

Everett, WA

Bill Clarke, Public Policy Director [via telephone]
Nick Harper, Government Affairs Director for Snohomish Co.-Camano Association
Isaac Blum, Legislative Study Team
Mary Rossi, Legislative Study Team

Suquamish Tribe

November 21, 2007

Suquamish, WA

Leonard Forsman, Chairman
Dennis Lewarch, Archaeologist
Isaac Blum, Legislative Study Team
Steve Kinley, Legislative Study Team
Mary Rossi, Legislative Study Team

Jefferson County Public Utility District #1

November 26, 2007

Discussion conducted via telephone

Dana Roberts, Commissioner
Isaac Blum, Legislative Study Team

Written Comments (listed chronologically)

Coeur d'Alene Tribe

August 13, 2007

Comments submitted to the Legislative Study Team via mail

Nancy A. Kenmotsu, Ph.D., Archaeologist

September 3, 2007

Comments submitted to the Legislative Study Team via email

James D. Nason, Burke Museum

September 11, 2007

Comments submitted to Representative McCoy via email and forwarded to the Legislative Study Team on September 25 at Representative McCoy's request

Frances Charles, Chairwoman, Lower Elwha Klallam Tribe

September 17, 2007

Request for a draft report submitted to Allyson Brooks (DAHP) and Craig Bill (GOIA) and copied to the Legislative Study Team via email and hard copy

Sergeant Mark Toner, King County Sheriff's Office Major Crimes Unit

Deborah Wilke, Washington Association of County Officials

September 20, 2007

Comments submitted to Representative McCoy via email and forwarded to the Legislative Study Team by Representative McCoy's legislative assistant

Allyson Brooks, Washington State Department of Archaeology and Historic Preservation

September 26, 2007

Response to Frances Charles' letter dated September 17, 2007, copied to the Legislative Study Team via email and hard copy

Frances Charles, Chairwoman, Lower Elwha Klallam Tribe

October 15, 2007

Comments on emerging themes and draft report submitted by Sharon Haensly, Williams Kastner law firm, to Craig Bill (GOIA) and copied to the Legislative Study Team via email and hard copy

Allyson Brooks, Washington State Department of Archaeology and Historic Preservation

October 15, 2007

Response to Sharon Haensly's email dated October 15, 2007, copied to the Legislative Study Team via email

Tulalip Tribes

October 26, 2007

Comments submitted to the Legislative Study Team via email and hard copy

Confederated Tribes and Bands of the Yakama Indian Nation

November 26, 2007

Comments dated November 16, 2007, submitted to Governor Gregoire, Senator Haugen, and Representative McCoy and copied to the Legislative Study Team via email and hard copy

Telephone Contact and Provision of Scope of Work via Email (listed chronologically)**Association of Washington Business**

August 6, 2007

Chris McCabe, Director of Government Affairs for Environmental Policy

Washington Association of Sheriffs and Police Chiefs

August 6, 2007

Sheriff Richard Lathim, President

Washington Association of Prosecuting Attorneys

September 18, 2007

Tom McBride, Executive Secretary

Yakima Valley Museum

September 19, 2007

David Lynx, Director

Washington Association of Sewer and Water Districts

September 26, 2007

Harold Schlomann, Executive Director

Telephone Messages Left (listed chronologically)**Associated General Contractors of Washington**

September 18, 2007

Rick Slunacker, Director of Government Affairs, State and National

Washington Public Utility Districts Association

September 18, 2007

Dave Warren, Energy Services Director

**APPENDIX B:
Handout Provided to Each Participant**

Scope of Work

**Washington State Legislature
Grave and Cemetery Protection Study**

**Original submitted to the
Department of Archaeology and Historic Preservation
and the Governor's Office of Indian Affairs**

**June 29, 2007
(abbreviated version created July 13 for discussion purposes)**

*Prepared by APT-Applied Preservation Technologies
Mary Rossi, Program Director
Isaac Blum, Program Manager*

Background:

On February 7, 2007, Senate Bill 5938 entitled "Providing a unified means for handling both Indian and non-Indian graves and cemeteries" was read and referred to the Senate Committee on Government Operations and Elections. Following a public hearing and executive action in the Senate Committee, a substitute bill entitled "Regarding the protection of graves and cemeteries" was proposed and on February 28 passed to the Senate Rules Committee for a second reading. On March 21, action on the bill ended.

Following the discussions of SB 5938, the State Legislature requested a study of the issues surrounding the discovery of human remains, both Indian and non-Indian. Funding for the study was appropriated to the Department of Archaeology and Historic Preservation (DAHP) and the Governor's Office of Indian Affairs (GOIA). The following scope of work describes how Applied Preservation Technologies (APT), a program of the nonprofit Eppard Vision, will produce the requested deliverables.

ASSUMPTIONS:

Study Team – APT has assembled and will coordinate a team of qualified individuals who will work cooperatively to complete the scope of work.

Timeline/Deliverables – The study timeline is July 1 to November 30, 2007. Requested deliverables are a report of findings/recommendations and model legislation. If the project budget does not allow for completion of all work items, the final report will include progress made to date and recommendations for addressing outstanding or additional work.

Study Team/Tribal Stakeholder Relationship – While the study team intends to discuss grave and cemetery protection with all 29 federally recognized Tribes, as consultants the team cannot conduct government-to-government consultation. True government-to-government consultation on the State level must occur between the Governor and the Tribal Chairpersons.

Stakeholder Participation – The study team will solicit the input of all 29 Tribes but not through individual meetings since the project timeline and budget do not allow for such an approach. By having Tribal leadership on the study team, the team will be able to discuss the issues with all of the Tribal Chairpersons, either by convening several meetings or by utilizing larger gatherings, such as the Affiliated Tribes of Northwest Indians and G-8 meetings. A similar approach will be utilized with other stakeholders when appropriate.

SCOPE OF WORK (tasks requested by the State Legislature):

- I. Examine the legal processes used to dedicate graves and human remains as cemeteries
- II. Examine the legal process of decertifying a cemetery
- III. Examine the legal process to permit the removal of human remains from property
- IV. Assess endangered cemeteries and current and older historic sites
- V. Develop a statewide strategy and action plan for ensuring that all discoveries of human remains are reported
- VI. Develop a process to ensure that all human remains, graves, and cemeteries are treated equally and with respect due to a finite, irreplaceable cultural resource of the people of Washington
- VII. Develop model legislation incorporating the above findings

APPENDIX C: Written Comments From the Yakama Nation



Confederated Tribes and Bands
of the Yakama Indian Nation

Established by the
Treaty of June 9, 1855

November 16, 2007

Governor Christine Gregoire
Office of the Governor
P. O. Box 40002
Olympia, WA 98504-0002

Senator Mary Margaret Haugen
305 John A. Cherberg Building
P. O. Box 40410
Olympia, WA 98504-0410

Representative John McCoy
338 John O'Brien Building
P. O. Box 40600
Olympia, WA 98504-0600

Dear Governor Gregoire, Senator Haugen, and Representative McCoy:

Cemeteries, ancestral burial grounds, and graves are sacred places to the Yakama People. Our ancestors are still members of our community and their final resting places are sanctified. The act of burying our loved ones certifies under customary law that the place is consecrated ground. We do not require a process of paperwork to demonstrate the eternal holiness of a grave.

The Yakama Nation has followed the discussions surrounding SB5938 since it was introduced in the state Senate last February. We are aware that no version of SB5938 passed but that a budget proviso was included in the 2007 Omnibus Budget Act directing the Department of Archaeology and Historic Preservation (DAHP) and the Governor's Office of Indian Affairs (GOIA) to conduct a study. The study shall examine existing state laws and provide an action plan to ensure that all discoveries of human remains are reported and that all graves are treated equally. We agree that all burials, both Indian and non-Indian, deserve to be treated with respect.

Eppard Vision was contracted by DAHP and GOIA to conduct the study. On October 22, 2007, members of the Tribal Council and General Council along with staff met with Eppard Vision to provide our perspective on the issues in the state legislature directed study. Their report will be necessarily generalized given the number of tribes and interest groups they are interviewing as well as the scope of work to be completed in such a short timeframe. While we appreciate the efforts of the group and their work, we respectfully submit the following comments to directly provide Washington state government with the Yakama Nation's viewpoint on appropriate protection of ancestral remains.

- I. **Processes used to dedicate cemeteries:** As stated above, the Yakama Nation does not require a paperwork process to dedicate a cemetery. The act of burying our loved ones, no matter how many generations ago, determines the place is consecrated ground and therefore a cemetery. The Yakama Nation strongly encourages Washington state to enact law to honor this philosophy by retaining automatic cemetery dedication that protects all places containing burials regardless of the number of graves.

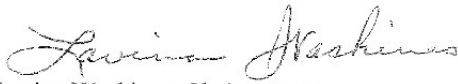
- II. **Processes used for decertifying a cemetery:** The concept of decertifying a cemetery is alien to the Yakama culture. Individuals are meant to remain where they are interred forever. Intentionally removing human remains from a grave is an extremely spiritually and emotionally disturbing idea for us. Decertifying a cemetery should be rare and difficult. Affected tribes should be given a formal role in any process when any proposals to decertify a cemetery involve Native Americans. Consent of the tribal government should be required when Native American graves are involved and site protection is to be terminated. The proponent should incur all costs associated with tribal involvement in the process.
- III. **Processes used to permit the removal of human remains from a property:** As stated above, intentionally removing human remains from a grave is an extremely spiritually and emotionally disturbing and alien concept to the Yakama culture. Affected Tribes should be given a formal role when any proposal is made to disinter human remains that may be Native American. Consent of the tribal government should be required when Native American graves are involved and site protection is to be terminated. The proponent should incur all costs associated with tribal involvement in the process.
- IV. **Assess endangered cemeteries and older historic sites:** The state legislature should appropriate adequate funding to establish and maintain a confidential database of known and likely to be known cemeteries, burial grounds, and graves. Automatic cemetery dedication and protection should apply to all areas determined to contain graves regardless of the age, affiliation and number of graves.
- V. **Mandate preventative measures:** It is very important that the Yakama Nation be alerted when development is proposed in their ceded and usual and accustomed areas, that could lead to a disturbance of cultural and human remains. The ultimate protection and prevention of the loss of cultural and human remains begins when an application is made for a permit to disturb the ground. This should occur at the local government level when an application for a permit for development is filed. Affected Tribes should be notified of all development permits.
- VI. **Ensure that all cultural and human remain discoveries are reported, provide incentives, and penalize non-compliance:** Landowners and managers including state agencies, counties, municipalities and their subdivisions should be required to report all discoveries of human remains. The current voluntary system is inadequate. There should be a brief time period, about 24 hours, where all appropriate entities are informed of the discovery. Tribes whose traditional lands are in the area of discovery should be among the first contacted along with the County Sheriff and DAHP. Incentives should be implemented to encourage landowners to comply with the requirement. Penalties should be established for those who do not comply, including state agencies, counties, municipalities and their subdivisions.
- VII. **Provide Funding:** For inadvertent discoveries there needs to be a source of funding to cover the costs of investigation and re-interment. Upon inadvertent discovery, all activity should cease until the Tribal Government, DAHP, and the County Sheriff determines what parties should be involved to protect the human remains.
- VIII. **Equal treatment of all human remains, graves, and cemeteries:** The Yakama Nation supports equal respect and protection of all graves, burial grounds, and cemeteries. For Native American burials, the affected tribal government is the

primary entity with the cultural knowledge for respectful treatment of their ancestors.
State law must defer to tribal authority for Native American human remains.

- IX. **Develop model legislation:** Legislative staff should incorporate tribal concerns and perspectives into the model legislation.

We appreciate the opportunity to provide the Governor, Legislators and State Agencies with our perspectives on the sensitive issue of appropriately treating the discovery of human remains. If you have any questions or comments, please do not hesitate to call Dawn Vyvyan at (206) 628-3014 or Matt Tomaskin at (509) 865-5121 extension 4848.

Sincerely,



Lavina Washines, Chairwoman
Tribal Council

cc: Senator Darlene Fairley, Chair of Senate Government Operations & Elections Committee
Representative Sam Hunt, Chair of House State Government & Tribal Affairs Committee
Allyson Brooks, Department of Archeology and Historic Preservation
Craig Bill, Governor's Office of Indian Affairs
Eppard Vision